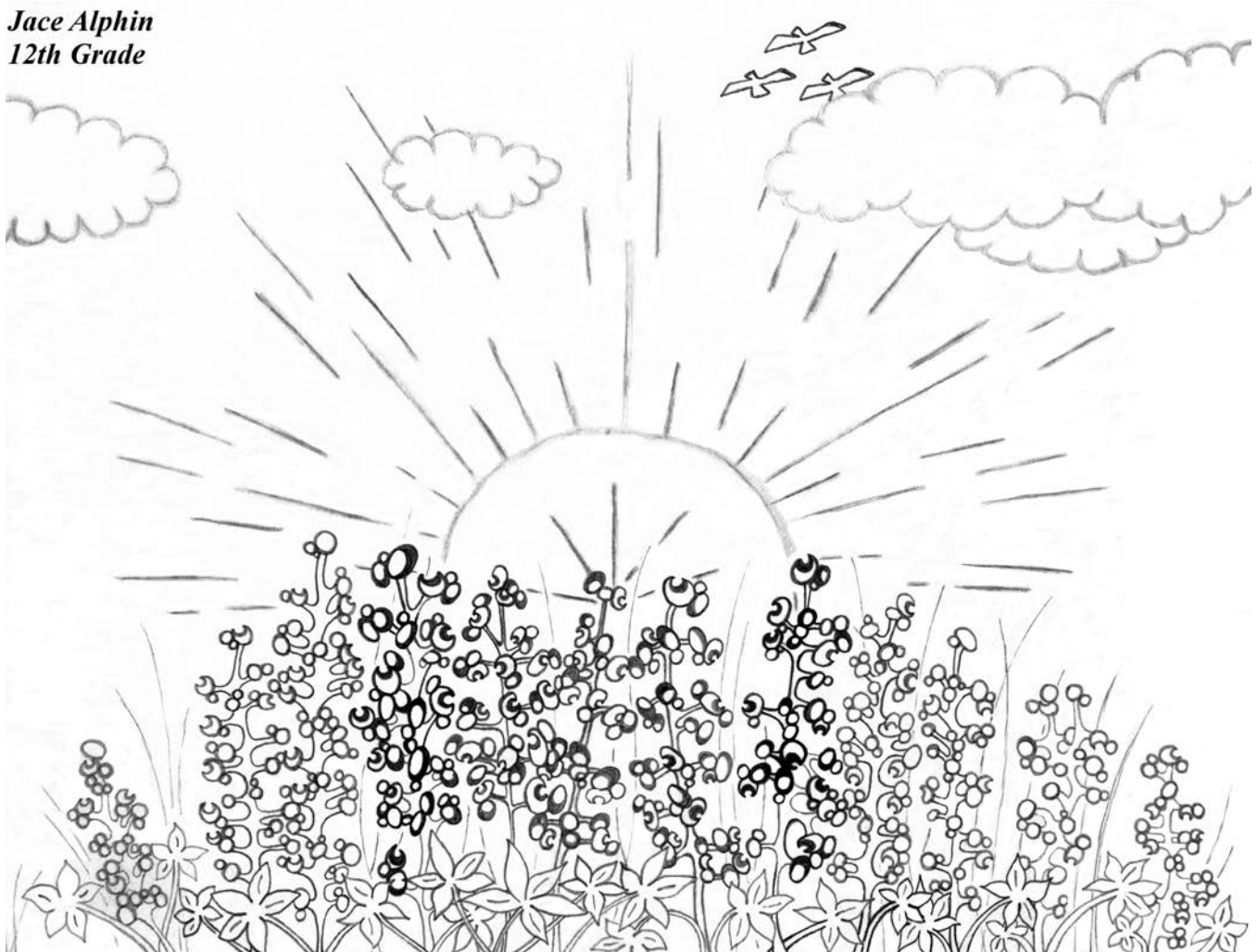

TEXAS REGISTER

Volume 38 Number 20

May 17, 2013

Pages 2921 -

*Jace Alphin
12th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
Office of the Secretary of State
P.O. Box 13824
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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Requests for Opinions

RQ-1124-GA

Requestor:

The Honorable Robert Henneke

Kerr County Attorney

700 Main Street, Suite BA-103

Kerrville, Texas 78028

Re: Whether an official court reporter appointed pursuant to Government Code section 52.041 is a state employee or a county employee (RQ-1124-GA)

Briefs requested by May 22, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301834

Katherine Cary

General Counsel

Office of the Attorney General

Filed: May 8, 2013



Opinions

Opinion No. GA-1004

Kyle L. Janek, M.D.

Executive Commissioner

Texas Health and Human Services Commission

Post Office Box 13247

Austin, Texas 78711

Re: Whether the Health and Human Services Commission is authorized to pay or, alternatively, an employee is required to pay interest on the amount paid to the Employees Retirement System to restore a reinstated employee's service credit when the employee has been reinstated as part of a grievance procedure (RQ-1098-GA)

SUMMARY

A court would likely determine that ERS is authorized to require the payment of interest to establish service credit of an employee who has been reinstated after wrongful termination.

It is for the Health and Human Services Commission to determine, in the first instance, the manner in which it will pay interest to the Employees Retirement System to establish service credit for an employee who is reinstated after wrongful termination.

Opinion No. GA-1005

Ms. Phyllis L. Martin

Montgomery County Auditor

Post Office Box 539

Conroe, Texas 77305

Re: The appointment and compensation of temporary justices of the peace (RQ-1099-GA)

SUMMARY

Section 27.055 of the Government Code permits the appointment of one qualified person to serve as temporary justice of the peace to replace an individual justice of the peace who is unable to perform the duties of the office. Section 27.055 does not permit a county judge to appoint an "at large" temporary justice of the peace. A sitting justice of the peace may serve as a temporary justice of the peace under section 27.055, in place of a regular justice of the peace in the same county, provided the justice of the peace is a "qualified person."

The compensation of a temporary justice of the peace as outlined under section 27.055 of the Government Code does not conflict with section 27.054 of the Government Code or chapter 152 of the Local Government Code.

A court would likely conclude that a sitting justice of the peace who also serves as a temporary justice of the peace under section 27.055 does not violate article XVI, section 40 of the Texas Constitution.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301833

Katherine Cary

General Counsel

Office of the Attorney General

Filed: May 8, 2013



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-579. The Texas Ethics Commission has been asked to consider whether a federal committee that supports a candidate for federal office located in Texas is required to file a campaign treasurer appointment or campaign finance reports with the commission.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201301789
Natalia Ashley
Special Counsel
Texas Ethics Commission
Filed: May 6, 2013

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.509

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.509, concerning a quarantine for the Mexican fruit fly (Mexfly) *Anastrepha ludens* (Loew). The new sections are adopted on an emergency basis to prevent the spread of Mexflies and to maintain the pest's eradicated status in Texas. The emergency new sections require application of treatments and prescribe specific restrictions on the handling and movement of quarantined articles.

Texas spent more than 80 years under permanent United States Department of Agriculture (USDA) quarantine for Mexfly before, on January 3, 2012, the state's Mexfly population was declared eradicated by USDA's Animal and Plant Health Inspection Service (APHIS) because no Mexflies had been trapped in Texas since May 8, 2009. An ongoing risk of reintroduction of the pest is mitigated by continued trapping to detect incipient re-infestations.

Consistent with this risk, larval Mexfly were found by fruit cutting in grapefruit fruit on a dooryard tree at a residence in San Perlita, Willacy County, Texas, on April 22, 2013; the larvae were in association with Wild Fly #14, collected on April 15, 2013. The larval finding necessitates filing of an emergency quarantine in the *Texas Register* for the San Perlita quarantined area, an 81 square mile area surrounding the capture site, in order to implement measures to maintain the state's eradicated status. The quarantined area does not include any commercial citrus fruit production groves.

This emergency quarantine provides for the department to designate additional quarantined areas and core areas within quarantined areas, as new infestations occur, and provides methods of notifying affected producers of additional designated quarantined areas and core areas within an infested area.

The department believes that it is necessary to take this immediate action to maintain the fly-free status of Willacy County and to prevent the spread of the Mexfly into commercial citrus growing areas of Texas and other states. The department believes that adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment

of the infestation, a statewide quarantine implemented by the USDA could become necessary, with resultant losses of important export markets and requirements for regulatory treatments such as fumigation of all exported fruit. This emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting Texas' important citrus industry.

New §19.500 defines various significant terms. New §19.501 defines the quarantined pest and explains the basis for the quarantine. New §19.502 establishes the duration of the quarantine. New §19.503 designates quarantined areas and core areas within the quarantined areas that are subject to the quarantine and provides for increasing or otherwise updating the quarantined areas and core areas by means of the department's web page. New §19.504 lists articles subject to the quarantine. New §19.505 provides restrictions on the movement of articles subject to the quarantine. New §19.506 provides requirements for monitoring, handling, and treatment of regulated articles in a quarantined area. New §19.507 provides consequences for failure to comply with quarantine restrictions. New §19.508 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.509 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. The department may propose adoption of this updated quarantine on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.500. Definitions.

In addition to words and terms defined in §19.1 of this title (relating to Definitions) that may be appropriate to this subchapter, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Article--Any plant, insect, other organism, or substance of regulatory concern.

(2) Core area--Within a given quarantined area, any defined area surrounding a location where one or more quarantined pests have been detected. Each core area in a quarantined area is given a core area number and is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984. Core areas may

be subject to requirements beyond those applicable to other parts of a quarantined area.

(3) Day degrees--A unit of measurement used to measure the amount of heat required to further the development of Mexican fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process that is specific to each species.

(4) Infestation (Infest, Infested)--The presence of Mexican fruit flies or the existence of circumstances that makes it reasonable to believe that Mexican fruit flies are present.

(5) Mexican fruit fly (Mexfly)--A dangerous insect pest, *Anastrepha ludens* (Loew), that feeds destructively on fruit of many species of plants and that is not widely distributed in this state.

(6) Quarantined area (quarantined infested area, or infested area subject to the quarantine)--Any defined area designated in this subchapter or on the department's web page as having been determined by the department or by USDA to have the quarantined pest present, from which dissemination of the pest is to be prevented, and within which the pest is to be eradicated. Each quarantined area is given a name and is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(7) Quarantined pest--An organism, the Mexican fruit fly, designated in this subchapter as a quarantined pest; such an organism is subject to the restrictions of this subchapter.

(8) Regulated article--Any article designated in this subchapter as a regulated article and that therefore is subject to restrictions in this subchapter.

(9) USDA--The United States Department of Agriculture.
§19.501. Quarantined Pest.

(a) The Mexican fruit fly (Mexfly), *Anastrepha ludens*, a dangerous insect pest of the host plants listed in §19.504 of this subchapter (relating to Regulated Articles), is the quarantined pest.

(b) Basis for the quarantine. The Mexfly is not native to the United States, but is able to establish infestations in Texas and some other parts of this country through cross-border traffic and trade and by natural dispersal. Mated female Mexflies oviposit in fruit, and resulting larvae feed on the flesh of the fruit, thereby making the fruit unmarketable. The department, many other states, and the USDA consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest identified in this section.

§19.502. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until it expires or until the quarantined pest described in §19.501 of this subchapter (relating to the Quarantined Pest) is eradicated. The quarantined pest shall be considered eradicated from the quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is temperature dependent; therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.503. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined areas. The following area, subject to modification on the department's web page, and all additional areas designated as quarantined areas on the department's web page, are declared to be quarantined areas: The San Perlita quarantined area in

Willacy County. The quarantine boundary of the "San Perlita quarantined area" in Willacy County is described as: Starting at a point described as 26.505293N Degrees Latitude and 97.652162W Degrees Longitude and then East to a point described as 26.559622N Degrees Latitude and 97.576641W Degrees Longitude and then South to a point described as 26.559622N Degrees Latitude and 97.577703W Degrees Longitude and then West to a point described as 26.429768N Degrees Latitude and 97.722912W Degrees Longitude and the return North to the starting point.

(b) Core areas. The following area, subject to modification on the department's web page, and all additional areas designated as core areas on the department's web page are declared to be core areas. The core areas in the "San Perlita quarantined area" in Willacy County is defined as follows: Core Area 1: Starting at a point described as 26.505293N Degrees Latitude and 97.652162W Degrees Longitude and then East to a point described as 26.505293N Degrees Latitude and 97.636018W Degrees Longitude and then South to a point described as 26.490767N Degrees Latitude and 97.636018W Degrees Longitude and then West to a point described as 26.490767N Degrees Latitude and 97.652162W Degrees Longitude and the return north to the starting point.

(c) New or revised quarantined infested areas or core areas. On the basis of new or revised information, the department may augment, diminish, fuse, eliminate, rename, or otherwise modify quarantined areas and core areas, and may designate additional quarantined areas or core areas.

(1) Designation or modification of a quarantined area or a core area is effective upon the posting of the notification of the quarantined area or core area on the Department's website (<http://www.TexasAgriculture.gov>).

(2) Notification shall consist in the posting on the department's web page of a map and a description of each affected quarantined area or core area.

(3) A printed copy of any current notifications or of this quarantine will be made available at the department's Valley Regional Office, 900-B East Expressway 83, San Juan, Texas 78589, (956) 787-8866. In addition, notification will be made through press release by the department. Supplemental information also may be available on the department's website (<http://www.TexasAgriculture.gov>), through press releases by the department.

§19.504. Regulated Articles.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the dangerous insect pest to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine:

(1) The Mexican fruit fly;

(2) The fruit, at any stage of development, of any of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:

(A) Apple (*Malus domestica*);

(B) Apricot (*Prunus armeniaca*);

(C) Avocado (*Persea americana*);

(D) Calamondin orange (*X citrofortunella mitis*);

(E) Cherimoya (*Annona cherimola*);

- (F) Citrus citron (*Citrus medica*);
- (G) Custard apple (*Annona reticulate*);
- (H) Grapefruit (*Citrus paradise*);
- (I) Guava (*Pisidium guajava*);
- (J) Japanese plum (*Prunus salicina*);
- (K) Lemon (*Citrus limon*) except Eureka, Lisbon, and Vila Franca cultivars (smooth skinned sour lemon);
- (L) Lime (*Citrus aurantifolia*);
- (M) Mammy-Apple (*Mammea americana*);
- (N) Mandarin orange (tangerine) (*Citrus reticulate*);
- (O) Mango (*Mangifera indica*);
- (P) Nectarine (*Prunus persica*);
- (Q) Peach (*Prunus persica*);
- (R) Pear (*Pyrus communis*);
- (S) Plum (*Prunus americana*);
- (T) Pomegranate (*Punica granatum*);
- (U) Prune, Plum (*Prunus domestica*);
- (V) Pummelo (shaddock) (*Citrus maxima*);
- (W) Quince (*Cydonia oblonga*);
- (X) Rose apple (*Syzygium jambos*) (*Eugenia jambos*);
- (Y) Sour orange (*Citrus aurantium*);
- (Z) Sapote (*Casimiroa* spp.);
- (AA) Sapota, Sapodilla (*Sapotaceae*);
- (BB) Sargentia, yellow chapote (*Sargentia greggi*);
- (CC) Spanish Plum, purple mombin or Ciruela (*Spondias* spp.);
- (DD) Sweet orange (*Citrus sinensis*);

(3) any other fruit capable of hosting, harboring, propagating, or disseminating the Mexican fruit fly;

(4) the producing plant if it has one or more fruits listed in paragraph (2) of this section attached to or growing from it; and

(5) any article, item, conveyance, or thing on or in which the Mexican fruit fly is actually found.

§19.505. Restrictions on Movement of Articles Subject to the Quarantine.

(a) In General.

(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by this subchapter.

(2) In order to prevent the movement of regulated articles, including the dangerous insect pest, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall

not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2010-2011 Harvest Season, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 83, San Juan, Texas 78589, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time this subchapter is published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA.

(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

§19.506. Monitoring, Handling and Treatment of Regulated Articles.

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit with air curtains, screens of appropriate mesh, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

§19.507. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine may be subject to administrative penalties not to exceed \$5,000 per occurrence, civil penalties not to exceed \$10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infested or not, transported out of or through the quarantined area in violation of this subchapter. Treatment, destruction, storage, or other charges, including those incurred by the depart-

ment, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.508. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.509. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the insect pest shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 1, 2013.

TRD-201301731

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: May 1, 2013

Expiration date: August 28, 2013

For further information, please call: (512) 463-4075



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 21. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

1 TAC §355.8401

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8401, concerning Case Management Reimbursement Methodology.

Background and Justification

Case management services for children and pregnant women are offered through Medicaid, although the Department of State Health Services (DSHS) administers the case management program under its rules in 25 TAC Chapter 27. HHSC, under its authority and responsibility to administer and implement Medicaid reimbursement rates, is proposing to amend §355.8401 to update and clarify the methodology used to determine the Medicaid reimbursement rates for providers of Case Management for Children and Pregnant Women services.

Section-by-Section Summary

The proposed amendment updates the title of the rule from "Case Management Reimbursement Methodology" to "Reimbursement Methodology for Case Management for Children and Pregnant Women" consistent with the current naming convention within the subchapter.

The substance of the rule is generally new and not carried forward from the current §355.8401.

Proposed new subsection (a) identifies the providers that are eligible for reimbursement.

Proposed new subsection (b) limits case management services to one unit of service, or contact, per day per client. Proposed new subsection (b) also names the types of services that can be reimbursed.

Proposed new subsection (c)(1) describes the reimbursement methodology.

Proposed new subsection (c)(2) describes additional rules in Chapter 355 applicable to the reimbursement methodology.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, during the first five years the amendment is in effect, there is no foreseeable fiscal impact to state government or local governments.

Ms. Rymal does not anticipate that there will be an economic cost to persons who are required to comply with the amendment for the first five years the rule will be in effect. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small or micro-businesses based on the proposal as there is no reduction in revenue or increase in costs to providers as a result of the proposed amendment.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years that the amended rule is in effect, the public is expected to benefit because HHSC will have the accurate and detailed reimbursement methodology for Case Management for Children and Pregnant Women program services in its rule base.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Yvonne Moorad, Senior Rate Analyst of Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to yvonne.moorad@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code Chapter 32.

The amendment affects the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8401. [Case Management] Reimbursement Methodology for Case Management for Children and Pregnant Women.

(a) Qualified providers. Payments are made to qualified providers delivering case management services to Medicaid-eligible individuals who are eligible for Case Management for Children and Pregnant Women according to Department of State Health Services (DSHS) rules at 25 TAC Chapter 27 (relating to Case Management for Children and Pregnant Women).

(b) Unit of service. Case Management for Children and Pregnant Women services are limited to one contact per day per client. Qualified providers are reimbursed based on a prospective and uniform statewide rate for the following types of services:

- (1) comprehensive visit;
- (2) face-to-face case management visit; and
- (3) telephone case management visit.

(c) Rate methodology.

(1) The Health and Human Services Commission determines Case Management for Children and Pregnant Women rates by modeling a rate for similar case management activities and using relevant costs and fees that provide information related to case management services for children and high risk pregnant women. HHSC will utilize the cost and fee survey data compiled as a basis for updating the reimbursement rate. Total reported costs are projected from the historical reporting period to the prospective rate period.

(2) The reimbursement methodology for Case Management for Children and Pregnant Women services is also governed by §355.108 of this chapter (relating to Determination of Inflation Indices) and §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

[(a) General information. The Health and Human Services Commission (HHSC) will reimburse qualified providers for case management services provided to Medicaid-eligible children and pregnant women. The HHSC determines reimbursement rates at least annually for case management services. These rates are:]

[(1) uniform throughout the geographic area(s) providing the service; and]

[(2) cost-related.]

[(b) Basis for rate analysis.]

[(1) For the initial reimbursement period, providers are reimbursed based on rates set as a result of modeling other rates for case management services, and cost information provided by the Texas Department of Health.]

[(2) At some future date, as yet unspecified, reimbursements will be based on cost-based prospective rates.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301739

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 424-6900



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER R. CHILDREN'S ACCESS TO NUTRITIOUS FOOD GRANT PROGRAM

4 TAC §§1.1200 - 1.1204

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter R, §§1.1200 - 1.1204, concerning a grant program for children's access to nutritious food. The new sections are proposed to implement Texas Agriculture Code, Chapter 25, which provides that the department by rule shall develop a grant program to award grants to nonprofit organizations for the purpose of allowing food banks to provide children at risk of hunger or obesity with access to nutritious food outside the school day. The new sections provide a statement of purpose for the new grant program, provide definitions to be used in Subchapter R, provide eligibility requirements, provide items that must be included in a proposal submitted under the program and provide for reporting requirements.

Bryan Daniel, chief administrator for trade and business development, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the new sections. There will be no fiscal implication for local government as a result of enforcing or administering the new sections.

Mr. Daniel has also determined that for each of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the opportunity for the department to fund the distribution of nutritious products to food banks and other charitable organizations. There will be no anticipated costs to microbusinesses, small or large businesses or to persons required to comply with the new sections.

Comments on the proposal may be submitted to Bryan Daniel, Chief Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, Chapter 25, §25.005, which provides the department with the authority to adopt rules as necessary for the adminis-

tration of the children's access to nutritious food grant program established under Chapter 25.

The code affected by this proposal is the Texas Agriculture Code, Chapter 25.

§1.1200. Statement of Purpose.

The grant program for children's access to nutritious food is established to award grants to nonprofit organizations for the purpose of allowing food banks to provide children at risk of hunger or obesity with access to nutritious food outside the school day.

§1.1201. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the text clearly indicates otherwise.

(1) Charitable organization--An organization organized for purely benevolent, charitable, educational or religious purpose and not for financial gain.

(2) Department--The Texas Department of Agriculture.

(3) Nonprofit Organization--An organization with an IRS designation as a 501(c)(3) organization which has been established and is operating for religious, charitable or educational purposes and does not distribute any of its income to its members, directors or officers.

§1.1202. Eligibility.

Subject to available funds, a nonprofit organization is eligible to receive a grant under this subchapter if the organization:

(1) has at least five years of experience coordinating a statewide network of food banks and charitable organizations that serve each county of this state;

(2) operates a program through a statewide network of food banks that provides children at risk of hunger or obesity with access to nutritious food outside the school day; and

(3) submits to the department in a manner and time prescribed by the Department, a detailed proposal for a program to purchase and distribute food using grant money to food banks or other charitable organizations.

§1.1203. Contents of Proposal.

The proposal submitted to the department in accordance with §1.1202 of this title (relating to Eligibility), shall include:

(1) a description of how the collection and distribution of food will be accomplished;

(2) a schedule of projected costs for the proposal;

(3) measurable goals for the proposal;

(4) a plan for evaluating the success of the proposal;

(5) a plan for evaluating the success of the program; and

(6) any other information requested by the department.

§1.1204. Reporting Requirements.

A nonprofit organization that receives a grant under this subchapter must report the results of the project to the Department in a manner prescribed by the Department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301781

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER C. LICENSE APPLICATIONS

16 TAC §60.33

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC) Chapter 60, Subchapter C, §60.33, concerning Temporary License Applications.

The proposed new rule is necessary to provide licensees the opportunity to begin working in their chosen occupation before receiving their initial license. A licensee who passes the required occupational test will be issued a temporary license at the testing site. The temporary license will remain in effect for 21 days, during which time the licensee will receive a permanent license from the Department through the United States Postal Service.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rule is in effect there will be no foreseeable implications relating to cost or revenues of the state or local government as a result of enforcing or administering the proposed new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rule is in effect, the public benefit will be encouraging economic activity by allowing individuals who meet the qualifications for a license to begin working as soon as possible.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the new rule as proposed.

Since the agency has determined that the proposed new rule will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as

necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§60.33. Temporary License Applications.

(a) This section applies to an applicant who has met all the requirements for an initial license issued under a law administered by the department.

(b) The department may issue a temporary license to an applicant described under subsection (a) who:

(1) submits a completed application on a department-approved form; and

(2) pays the initial license application fees.

(c) A temporary license expires upon an applicant's receipt of the initial license, but no later than 21 days after the date of issuance of the temporary license.

(d) A temporary license is not renewable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301776

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 475-4879



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.53 - 4.57, 4.59, 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.53 - 4.57, 4.59, and 4.62, concerning Texas Success Initiative (TSI), to reflect developmental education reform efforts as required in House Bill 1244, House Bill 3468, and Senate Bill 162 (82nd Legislature, Regular Session). Revisions address clarifying applicable definitions and exemptions; implementing a single, statewide assessment instrument and college readiness standard; recommending holistic assessment and placement; clarifying required program components; and ensuring consistent terminology throughout.

Dr. Judith Loredo, Assistant Commissioner for P-16 Initiatives, has determined that for each year of the first five years this section is in effect, there will not be any fiscal implications for state

or local government as a result of enforcing or administering the amendments to rules.

Dr. Loredo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be to establish clear rules for the consistent administration and evaluation of developmental education program efficiency and effectiveness. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Judith Loredo, P.O. Box 12788, Austin, Texas 78711, judith.loredo@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code §51.3062, which provides the Coordinating Board with the authority to establish policies and procedures relating to the TSI, and Texas Education Code §51.307, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Texas Education Code, Chapter 51, Subchapter F.

The amended sections affect Texas Education Code §51.3062.

§4.53. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Compressed Course--A developmental course that has the same number of contact hours and addresses the same learning outcomes as a traditional course but meets in a shortened overall time period (e.g., four weeks at twelve contact hours per week or eight weeks at six contact hours per week instead of sixteen weeks at three contact hours per week), thus allowing for multiple developmental courses to be completed in the same time period as one traditional course.

(6) Contextualized/Intensive Coursework--Strategies that accelerate learning for lower skilled learners whereby contextualized coursework integrates career subject matter with pre-college skills development in reading, writing, and mathematics; and intensive coursework shortens the overall delivery of a course through lengthened class meeting times (e.g., four hours per class meeting instead of two hours).

(7) [(5)] Course Pairing (also known as Mainstreaming)--An instructional strategy whereby students are enrolled simultaneously in a developmental education course and/or intervention and the entry-level freshman [gateway] course of the same subject matter within the same semester. The developmental component provides support that advances [the] students' success in the entry-level freshman [gateway] course.

(8) [(6)] Developmental Coursework and/or Intervention--Non-degree-credit coursework and/or activity designed to address a student's strengths and needs in the areas of reading, writing, integrated reading and writing (IRW), mathematics, and student success.

(9) [(7)] Developmental Education--Pre-college, non-degree credit [Developmental] courses, interventions, tutorials, laboratories, and other means of assistance that are included in a plan to ensure the success of a student in performing entry-level academic coursework.

(10) [(8)] Differentiated Instruction--The different instructional processes used to work within a student's varied skill levels, motivational attitudes, and learning preferences.

(11) [(9)] Differentiated Placement--Advising and placement of students based on individual strengths and needs.

(12) Entry-level course (sometimes referred to as entry-level freshman coursework)--Any course for academic credit in which a freshman student typically enrolls: the course shall not have prerequisites and is open to any student meeting TSI standards as defined in §4.57 of this title (relating to College Ready and Adult Basic Education (ABE) Standards) and/or meeting at least one of the exemptions or waivers as defined in §4.54 of this title (relating to Exemptions, Exceptions, and Waivers). These courses (or their local equivalent in Texas Common Core Numbering System) include, but are not limited to, ENGL 1301, HIST 1301, PSYC 2301, GOVT 1301, MATH 1314/1414/1324/1332/1342, SOCI 1301, PHIL 1301, SPCH 1311/1315, COSC 1401, HUMA 1301, ARTS 1301, and BIOL 1306/1406.

(13) [(40)] Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(14) [(41)] Measureable Learning Outcomes--Knowledge, skills, and abilities, and/or attitudes that students should be able to demonstrate upon completion of a course and/or intervention.

(15) [(42)] Minimum Passing Standards--The minimum scores which must be attained by a student in reading, writing, and mathematics in the TSI Assessment Instrument that indicates the student's readiness to enroll in entry-level freshman courses as defined in paragraph (12) of this section. These scores are set forth in §4.57 of this title [freshman-level academic coursework].

(16) [(43)] Non-Course-Competency-Based Developmental Education Interventions (also known as Non-Semester-Length Interventions or NCBO)--Interventions that use learning approaches designed to address a student's identified weaknesses and effectively and efficiently prepare the student for college-level work. These interventions must be overseen by an instructor of record, must not fit traditional course frameworks, and cannot include advising or learning support activities already connected to a traditional course; interventions may include, but are not limited to, tutoring, supplemental instruction, or labs.

(17) [(44)] Non-Degree Credit Course--A course which may not be counted toward a degree or certificate. The term includes developmental education, pre-collegiate, and general continuing education courses.

(18) [(45)] Professional Development--The provision of ongoing and systematic learning opportunities for developmental educators and support staff that focus on research-based strategies, methodologies, and best practices resulting in effective and efficient coursework and/or interventions advancing the cognitive and non-cognitive skills of underprepared students seeking post-secondary enrichment, certificates, and degrees.

(19) [(46)] Program Evaluation--A systematic method of collecting, analyzing, and using information to answer questions about developmental education courses, interventions, and policies, particularly about their effectiveness and cost-efficiency.

(20) [(47)] Technology--The use of instructional aids, methods and/or other computer-based tools that enhance student learning.

(21) TSI Assessment Time Periods--For phase-in of TSI Assessment college-ready standards, the following time periods shall be applicable:

(A) Phase I--Start date: institution's first class day of fall 2013; expiration: the day immediately before the first class day of fall 2017;

(B) Phase II--Start date: institution's first class day of fall 2017; expiration: the day immediately before the first class day of fall 2019; and

(C) Final Phase--Start date: institution's first class day of fall 2019; no expiration.

(22) TSI Assessment--The Board-approved assessment instrument designated in §4.56 of this title (relating to Assessment Instrument) for use by institutions of higher education for assessing a student's readiness to enroll in an entry-level freshman course.

§4.54. *Exemptions, Exceptions, and Waivers* [*Exemptions/Exceptions*].

(a) The following students shall be exempt from the requirements of this title, whereby exempt students shall not be required to provide any additional demonstration of college readiness and shall be allowed to enroll in any entry-level freshman course as defined in §4.53(12) of this title (relating to Definitions):

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) ACT: composite score of 23 with a minimum of 19 on the English test shall be exempt for both the reading and writing sections of the TSI Assessment, and/or 19 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment [those corresponding sections];

(B) SAT: [Scholastic Assessment Test (SAT):] a combined critical reading (formerly "verbal") [verbal] and mathematics score of 1070 with a minimum of 500 on the critical reading [verbal] test shall be exempt for both reading and writing sections of the TSI Assessment, and/or 500 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment [those corresponding sections]; or

(2) (No change.)

(3) For a period of five (5) years [three (3) years] from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) on the Eleventh grade exit-level Texas Assessment of Knowledge and Skills (TAKS) with a minimum scale score of 2200 on the math section and/or a minimum scale score of 2200 on the English Language Arts section with a writing subsection score of at least 3, shall be exempt from the TSI Assessment [assessment] required under this title for those corresponding sections; or[-]

(B) STAAR end-of-course (EOC) with a minimum score of Level 2 on the English III shall be exempt from the TSI Assessment required under this title for both reading and writing, and a minimum score of Level 2 on the Algebra II EOC shall be exempt from the TSI Assessment required under this title for the mathematics section.

(4) - (9) (No change.)

(b) (No change.)

(c) ESOL Waiver--An institution may grant a temporary waiver from the assessment required under this title for students

with demonstrated limited English proficiency in order to provide appropriate ESOL/ESL coursework and interventions. The waiver must be removed prior to the student attempting 15 credit hours of developmental ESOL coursework or attempting entry-level freshman coursework, whichever comes first, at which time the student would be administered the TSI Assessment. Funding limits as defined in Texas Education Code, §51.3062(l)(1) and (2) for developmental education still apply.

(d) [(e)] Any student who has been determined to be exempt in mathematics, reading, and/or writing under subsection (a) or (b) of this section shall not be required to enroll in developmental coursework and/or interventions in the corresponding area of exemption.

§4.55. *Assessment and Placement.*

(a) - (b) (No change.)

(c) For holistic placement of non-exempt students not meeting standards as defined in §4.57(a) and (b) of this title (relating to College Ready and Adult Basic Education (ABE) Standards), institutions shall use for determination of appropriate courses and/or interventions the TSI Assessment results and accompanying Diagnostic Profile, along with consideration of one or more of the following:

- (1) High school Grade Point Average/class ranking;
- (2) Prior academic coursework and/or workplace experiences;
- (3) Non-cognitive factors (e.g., motivation, self-efficacy);
- (4) Family-life issues (e.g., job, childcare, transportation, finances).

(d) [(e)] An institution offering collegiate-level credit to students via a Multi-Institution Teaching Center (MITC) or a university system center, or to in-state students by distance learning delivery systems shall ensure that students are assessed as required by this section.

(e) [(d)] An institution may not use the assessment or the results of the assessment as a condition of admission to the institution or as a condition of admission to a specific program offered by the institution.

§4.56. *Assessment Instrument [Instruments].*

Beginning with the institution's first class day of Academic Year (fall) 2013, an institution of higher education shall use the TSI Assessment offered by the College Board as the only Board-approved assessment instrument under this title. Any previously-employed assessments (ACCUPLACER, Compass, THEA, Asset, Compass ESL, ACCUPLACER ESL) can no longer be used under this title for entering students who initially enroll in any course on or after the institution's first class day in fall 2013.

[The following assessment instruments are approved by the Board:]

- [(1) ASSET and COMPASS offered by ACT;]
- [(2) ACCUPLACER offered by The College Board]
- [(3) Texas Higher Education Assessment (THEA) (formerly TASP Test) offered by National Evaluation Systems, Inc.]

§4.57. *College Ready and Adult Basic Education (ABE) [Minimum Passing] Standards.*

(a) The following minimum passing standards for reading and mathematics on the TSI Assessment shall be used by an institution to determine a student's readiness to enroll in entry-level freshman coursework:

(1) Phase I as defined in §4.53(21) of this title (relating to Definitions) - Reading 351; Mathematics 350;

(2) Phase II as defined in §4.53(21) of this title - Reading 355; Mathematics 356; and

(3) Final Phase as defined in §4.53(21) of this title - Reading 359; Mathematics 369.

(b) The following standards on the TSI Assessment may be used by an institution for consideration of courses and/or interventions addressing the educational and training needs of students at the Adult Basic Education levels (at or below the following cut scores, with no phase-in period):

(1) Reading 342;

(2) Writing 350;

(3) Mathematics 336.

(c) The Phase I, II, and Final Phase college readiness passing standard for the writing portion of the TSI Assessment is an essay score of 5. However, an essay score of 4 will meet this standard if the student also meets the multiple choice writing standard of 363.

(d) An institution shall not require higher Phase I, II, and Final Phase college readiness standards on any or all portions of the TSI Assessment to determine a student's readiness to enroll in any entry-level freshman course.

(e) Determination of applicable Phase I, II, or Final Phase standards as defined in subsections (a), (b), and (c) of this section is based on the student's initial TSI Assessment testing date in any subject area. TSI Assessment results are valid for five (5) years from date of testing.

[(a) The following minimum passing standards shall be used by an institution to determine a student's readiness to enroll in freshman-level academic coursework:]

[(1) ASSET: Reading Skills - 41; Elementary Algebra - 38; Writing Skills (objective) - 40; and Written Essay - 6.]

[(2) COMPASS: Reading Skills - 81; Algebra - 39; Writing Skills (objective) - 59; and Written Essay - 6.]

[(3) ACCUPLACER: Reading Comprehension - 78; Elementary Algebra - 63; Sentence Skills - 80; and Written Essay - 6.]

[(4) THEA: Reading - 230; Mathematics - 230; Writing - 220.]

[(b) The minimum passing standard for the written essay portion of all tests is a score of 6. However, an essay with a score of 5 will meet this standard if the student meets the objective writing test standard.]

[(c) An institution may require higher passing standards. This subsection expires academic year 2013-2014.]

§4.59. *Determination of Readiness to Perform Entry-Level Freshman[-level Academic] Coursework.*

(a) An institution shall determine when a student is ready to perform entry-level freshman[-level academic] coursework using:

(1) Developmental education coursework and/or intervention learning outcomes developed by the Board based on the Texas College and Career Readiness Standards; and

(2) Student performance on one or more appropriate assessments, including scores resulting from a student's retaking of the TSI Assessment.

(b) As indicators of readiness, institutions shall consider, as appropriate:

- (1) Performance in developmental education.
- (2) Performance in appropriate non-developmental coursework.

(c) A student may retake an assessment instrument at any time, subject to availability, to determine the student's readiness to perform entry-level freshman[~~level academic~~] coursework.

(d) An institution shall, as soon as practicable and feasible, indicate a student's readiness in reading, mathematics, and writing on the transcript of each student.

§4.62. Required Components of Developmental Education Programs.

(a) An institution of higher education must base developmental coursework on research-based best practices that include all of the following components:

- (1) assessment;
- (2) differentiated placement and instruction;
- (3) faculty development;
- (4) support services;
- (5) program evaluation;
- (6) integration of technology with an emphasis on instructional support programs;
- (7) non-course-based developmental education interventions; and
- (8) course pairing of developmental education courses/interventions with entry-level freshman courses, also known as mainstreaming or co-enrollment of developmental education and entry-level freshman courses as defined in §4.53(12) of this title (relating to Definitions) [with credit-bearing courses].

(b) As part of subsection (a)(2) of this section, institutions shall offer Integrated Reading and Writing (IRW) course/intervention at the highest level (just below college-readiness as determined by the institution) by spring 2015.

(c) As part of subsection (a)(7) of this section, institutions shall offer at least one section of non-course competency-based intervention (NCBO) per developmental education subject area by spring 2015.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301782

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 25, 2013

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.4

Introduction. The Texas Board of Nursing (Board) proposes amendments to §211.4, concerning Officers. The amendments are proposed under the authority of the Occupations Code §301.057(b) and §301.151 and codify the Board's existing policies and practice regarding the election of the Board's Vice President in rule.

At its January 2009 meeting, the Board appointed a four-member Task Force to review the role and duties of the Board's Vice President. The Task Force concluded its review and presented a report to the full Board at its April 2009 Board meeting. In addition to making recommendations regarding the responsibilities of the Vice President, the Task Force recommended that the term of the Vice President be extended from one year to two years. The Board accepted the recommendations of the Task Force and authorized Board Staff to incorporate the Task Force's recommendations into Board rules and policies. In April 2009, the Board updated its policies to reflect that the Vice President would be elected at the Board's October meeting, in even-numbered years. Although 22 TAC §211.4 currently addresses the election of the Vice President, the Board has determined that the rule should be amended for consistency with the recommendations of the Task Force and the Board's existing policies and practice. As such, the proposed amendments specify that the term of the Vice President will be a two-year term and that Board elections will be held biennially, based upon the calendar year. The proposed amendments also prescribe procedures in the event that the office of the Vice President becomes vacant during any two-year term.

Section-by-Section Overview.

Proposed amended §211.4(a) provides that, during the last meeting of the calendar year in even years, the Board will select from among its membership a Vice President. Further, the term of the vice president will be for two years. Proposed amended §211.4(a) also provides that, if the office of Vice President becomes vacant during a two-year term, the members of the Board will elect a new Vice President from among its membership to serve for the remainder of the term.

Fiscal Note.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits. The anticipated public benefits will be the adoption of requirements that are consistent with the Occupations Code §301.057(b) and §301.151 and promote an orderly, fair, and transparent process for the election of the Board's Vice President.

Potential Costs.

The proposed amendments codify the Board's policies and practice regarding the election of its Vice President. The proposed amendments do not impose any requirements or conditions on any applicant, licensee, or Board regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board-regulated entity, or other entity required to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment.

The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment.

To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code §301.057(b) and §301.151.

Section 301.057(b) provides that the Board shall elect other officers from its members.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute.

The following statutes are affected by this proposal: Occupations Code §301.057 and §301.151.

§211.4. *Officers.*

(a) Selections and appointments. In accordance with the Texas Occupations Code §301.057, the Governor shall designate one of the members of the board as presiding officer. During the last meeting of the calendar [fiscal] year in even years, the board shall elect from among its membership a vice president. The term of the vice president shall be for two years. If the office of vice president becomes vacant during a two-year term, the members of the board shall elect a new vice president from among its membership to serve for the remainder of the term. All elections and any other issues requiring a vote of the board shall be decided by a simple majority of the members present and voting.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301779

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 305-6822



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.27

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.27, concerning Good Professional Character. Specifically, the proposed amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in §213.27(g). The amendments are proposed under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

Background. The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines and, on July 2, 2008, adopted the Guidelines by reference in §213.27(g)(5) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering whether: (i) portions of the Guidelines were outdated/obsolete; (ii) the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.27(g) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony);

bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as

felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Com-

mittee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been re-organized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

The amended Guidelines, which are incorporated by reference into this rule proposal, are published in the "In Addition" section of this issue of the *Texas Register*.

Section-by-Section Overview. Proposed amended §213.27(g)(5) provides that the amended Guidelines must be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating good professional character in eligibility and disciplinary matters.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits. The anticipated public benefits will be the adoption of requirements that implement the provisions of the Occupations Code Chapters 53 and 301 and promote fairness, consistency, efficiency, and predictability in Board decisions regarding eligibility and disciplinary matters.

The proposed amendments incorporate the use of the Guidelines in eligibility and disciplinary matters before the Board. In particular, the proposed amendments incorporate the use of the Guidelines in determining an individual's good professional character, which an individual must possess in order to obtain or retain a nursing license. The Guidelines identify specific criminal offenses that are of concern to the Board, as well as provide notice of the potential consequences of these criminal offenses to licensees and the general public. Providing advance notice of the potential consequences of such conduct promotes fair, consistent, and efficient regulation and helps ensure consistency among Board decisions in eligibility and disciplinary matters for similarly situated individuals.

Potential Costs for Individuals Required to Comply with the Proposal. The proposed amendments incorporate the Guidelines into Board rule. The Guidelines provide notice to applicants, licensees, and the general public of the potential consequences of a criminal offense on an individual's nursing licensure status. The proposed amendments require the Executive Director, SOAH, and the Board to utilize the Guidelines in evaluating good professional character in eligibility and disciplinary matters. However, the Guidelines do not impose any requirements or conditions on any applicant, licensee, or Board regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal

activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons

probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by

§301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

Cross Reference to Statute.

The following statutes are affected by this proposal: the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

§213.27. *Good Professional Character.*

(a) - (f) (No change.)

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office

of Administrative Hearings (SOAH), and [or] the Board in evaluating good professional character in eligibility and disciplinary matters:

(1) - (4) (No change.)

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published [on March 9, 2007] in the May 17, 2013, issue of the *Texas Register* [(32 TexReg 1409)] and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html> [<http://www.bon.state.tx.us/disciplinaryaction/diseep-guide.html>].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301762

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 305-6822



22 TAC §213.28

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.28, concerning Licensure of Persons with Criminal Offenses. Specifically, the proposed amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in §213.28(m). The amendments are proposed under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

Background. The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines and, on July 2, 2008, adopted the Guidelines by reference in §213.28(m)(5) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering whether: (i) portions of the Guidelines were outdated/obsolete; (ii) the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by

Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.28(m) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each of-

fense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been re-organized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a correspond-

ing range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

The amended Guidelines, which are incorporated by reference into this rule proposal, are published in the "In Addition" section of this issue of the *Texas Register*.

Section-by-Section Overview. Proposed amended §213.28(m)(5) provides that the amended Guidelines must be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits. The anticipated public benefits will be the adoption of requirements that implement the provisions of the Occupations Code Chapters 53 and 301 and promote fairness, consistency, efficiency, and predictability in Board decisions regarding eligibility and disciplinary matters.

The proposed amendments incorporate the use of the Guidelines in eligibility and disciplinary matters before the Board. In particular, the proposed amendments incorporate the use of the Guidelines in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters. The Guidelines identify specific criminal offenses that are of concern to the Board, as well as provide notice of the potential consequences of these criminal offenses to licensees and the general public. Providing advance notice of the potential consequences of such conduct promotes fair, consistent, and efficient regulation and helps ensure consistency among Board decisions in eligibility and disciplinary matters for similarly situated individuals.

Potential Costs for Individuals Required to Comply with the Proposal. The proposed amendments incorporate the Guidelines into Board rule. The Guidelines provide notice to applicants, licensees, and the general public of the potential consequences of a criminal offense on an individual's nursing licensure status. The proposed amendments require the Executive Director, SOAH, and the Board to utilize the Guidelines in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters. However, the Guidelines do not impose any requirements or conditions on any applicant, licensee, or Board regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would

create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of

qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of

the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

Cross Reference to Statute.

The following statutes are affected by this proposal: the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

§213.28. *Licensure of Persons with Criminal Offenses.*

(a) - (l) (No change.)

(m) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and [øf] the Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) - (4) (No change.)

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published [on March 9, 2007] in the May 17, 2013, issue of the *Texas Register* [(32 TexReg 1409)] and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html> [<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301763

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 305-6822



22 TAC §213.29

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.29, concerning Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters. Specifically, the proposed amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in §213.29(j). The amendments are proposed under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

Background. The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines and, on July 2, 2008, adopted the Guidelines by reference in §213.29(j)(2) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make

recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering whether: (i) portions of the Guidelines were outdated/obsolete; (ii) the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.29(j) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board

are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been re-organized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

The amended Guidelines, which are incorporated by reference into this rule proposal, are published in the "In Addition" section of this issue of the *Texas Register*.

Section-by-Section Overview. Proposed amended §213.29(j)(2) provides that the amended Guidelines must be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits. The anticipated public benefits will be the adoption of requirements that implement the provisions of the Occupations Code Chapters 53 and 301 and promote fairness, consistency, efficiency, and predictability in Board decisions regarding eligibility and disciplinary matters.

The proposed amendments incorporate the use of the Guidelines in eligibility and disciplinary matters before the Board. In particular, the proposed amendments incorporate the use of the Guidelines in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters. The Guidelines identify specific criminal offenses that are of concern to the Board, as well as provide notice of the potential consequences of these criminal offenses to licensees and the general public. Providing advance notice of the potential consequences of such conduct promotes fair, consistent, and efficient regulation and helps ensure consistency among Board decisions in eligibility and disciplinary matters for similarly situated individuals.

Potential Costs for Individuals Required to Comply with the Proposal. The proposed amendments incorporate the Guidelines into Board rule. The Guidelines provide notice to applicants, licensees, and the general public of the potential consequences of a criminal offense on an individual's nursing licensure status. The proposed amendments require the Executive Director, SOAH, and the Board to utilize the Guidelines in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters. However, the Guidelines do not impose any requirements or conditions on any applicant, licensee, or Board regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the

judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority un-

der Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the pub-

lic; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered

license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

Cross Reference to Statute.

The following statutes are affected by this proposal: the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

§213.29. *Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.*

(a) - (i) (No change.)

(j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), and [or] the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:

(1) (No change.)

(2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published [~~on March 9, 2007~~] in the May 17, 2013, issue of the *Texas Register* [(32 TexReg 1409)] and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html> [<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301764

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 305-6822



22 TAC §213.30

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.30, concerning Declaratory Order of Eligibility for Licensure. Specifically, the proposed amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in §213.30(j). The amendments are proposed under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing

agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

Background. The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines and, on July 2, 2008, adopted the Guidelines by reference in §213.30(j)(5) (33 TexReg 5007). The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering whether: (i) portions of the Guidelines were outdated/obsolete; (ii) the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.30(j) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony);

theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous example, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history

on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been re-organized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

The amended Guidelines, which are incorporated by reference into this rule proposal, are published in the "In Addition" section of this issue of the *Texas Register*.

Section-by-Section Overview. Proposed amended §213.30(j)(5) provides that the amended Guidelines must be used by the Executive Director and State Office of Administrative Hearings (SOAH) when recommending a declaratory order of eligibility and by the Board in determining the appropriate declaratory order in eligibility matters.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits. The anticipated pub-

lic benefits will be the adoption of requirements that implement the provisions of the Occupations Code Chapters 53 and 301 and promote fairness, consistency, efficiency, and predictability in Board decisions regarding eligibility and disciplinary matters.

The proposed amendments incorporate the use of the Guidelines in eligibility and disciplinary matters before the Board. In particular, the proposed amendments incorporate the use of the Guidelines in determining the appropriate declaratory order in eligibility matters. The Guidelines identify specific criminal offenses that are of concern to the Board, as well as provide notice of the potential consequences of these criminal offenses to licensees and the general public. Providing advance notice of the potential consequences of such conduct promotes fair, consistent, and efficient regulation and helps ensure consistency among Board decisions in eligibility and disciplinary matters for similarly situated individuals.

Potential Costs for Individuals Required to Comply with the Proposal. The proposed amendments incorporate the Guidelines into Board rule. The Guidelines provide notice to applicants, licensees, and the general public of the potential consequences of a criminal offense on an individual's nursing licensure status. The proposed amendments require the Executive Director, SOAH, and the Board to consider the Guidelines when recommending a declaratory order of eligibility and in determining the appropriate declaratory order in eligibility matters. However, the Guidelines do not impose any requirements or conditions on any applicant, licensee, or Board regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and respon-

sibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health, education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or

chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revoca-

tion of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order

may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) ad-

ministration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated as-

sault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

Cross Reference to Statute.

The following statutes are affected by this proposal: the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

§213.30. *Declaratory Order of Eligibility for Licensure.*

(a) - (i) (No change.)

(j) The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this chapter and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters:

(1) - (4) (No change.)

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published [~~on March 9, 2007~~] in the May 17, 2013, issue of the *Texas Register* [(32 TexReg 1409)] and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html> [<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>].

(k) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2013.



22 TAC §213.33

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.33, concerning Factors Considered for Imposition of Penalties/Sanctions. Specifically, the proposed amendments affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in §213.33(b) and (g). The amendments are proposed under the authority of the Occupations Code §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535; and the Occupations Code Chapter 53, particularly §53.025(a), which requires licensing agencies to issue guidelines that state the reasons that a particular crime is considered to relate to the practice of the licensing agency and any other criterion that affects the decision of the licensing agency when considering the effects of the crime on an individual's licensure status.

Background. The Guidelines were originally approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409). The Board received no public comments on the Guidelines and, on July 2, 2008, adopted the Guidelines by reference in §213.33(g)(5) (33 TexReg 5007). The Guidelines were later incorporated by reference in §213.33(b) (35 TexReg 1208) in 2010. The Guidelines have not undergone formal review and amendment since their original publication date in 2007. As a result, at its April 2012 meeting, the Board issued a charge to the Eligibility and Disciplinary Advisory Committee (Committee) to review and make recommendations regarding the Guidelines. In particular, the Board charged the Committee with considering whether: (i) portions of the Guidelines were outdated/obsolete; (ii) the Guidelines should establish a minimally acceptable sanction for each criminal offense; (iii) the recommended range of sanctions in the Guidelines were appropriate; and (iv) the type and/or amount of mitigating evidence necessary to support a more lenient sanction under the Guidelines.

The Committee met on November 30, 2012; February 8, 2013; and March 25, 2013 to review the Guidelines. Following a detailed review and discussion of the Guidelines, the Committee voted unanimously to recommend several changes to the Board. The Committee's recommended changes to the Guidelines, along with minor editorial/typographical changes identified by Board Staff, were presented to the Board at its April 2013 meeting. The Board voted to adopt the Guidelines, as amended, and propose amendments to §213.33(b) and (g) to incorporate the adopted changes into rule.

Many of the changes to the Guidelines are editorial and organizational in nature. However, some of the changes are more substantive. First, thirty-five new criminal offenses have been added to the Guidelines. These offenses include various felonies and misdemeanors, as well as crimes that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as affecting nursing licensure. The additional crimes include: continuous sexual abuse of young child or children (§301.4535(a)(5)); offenses for which registration as a sex offender is required under the Code of Criminal Procedure

Chapter 62 (§301.4535(a)(16)); aggravated perjury (felony); bail jumping and failure to appear (felony/misdemeanor); bribery (felony); burglary of vehicles (felony/misdemeanor); credit card/debit card abuse (felony); criminal nonsupport (felony); driving while intoxicated with child passenger (felony); evading arrest or detention (felony/misdemeanor); failure to identify (misdemeanor); fraudulent destruction, removal, or concealment of writing (felony/misdemeanor); fraudulent use of possession of identifying information (felony); harboring runaway child (misdemeanor); hindering apprehension or prosecution (felony/misdemeanor); hindering secured creditors (felony/misdemeanor); interference with child custody (felony); intoxication assault (felony); intoxication manslaughter (felony); misapplication of fiduciary property or property of financial institution (felony/misdemeanor); obstruction or retaliation (felony); perjury (misdemeanor); prohibited substances and items in correctional facility (felony); prohibited weapon (felony/misdemeanor); public lewdness (misdemeanor); securing execution of document by deception (felony/misdemeanor); smuggling of persons (felony); tampering with or fabricating physical evidence (felony/misdemeanor); tampering with witness (felony); theft of service (felony/misdemeanor); trafficking of persons (felony); unlawful carrying weapon (felony/misdemeanor); unlawful possession of firearm (felony/misdemeanor); unlawful restraint (misdemeanor); and violation of civil rights of person in custody/improper sexual acts with a person in custody (felony/misdemeanor).

Pursuant to the Occupations Code Chapters 53 and 301 (Nursing Practice Act), criminal offenses may affect an individual's ability to obtain a nursing license (licensure eligibility) and a nurse's licensure status (licensure discipline). Board Staff routinely review individuals' criminal history to determine what effect, if any, a particular offense may have in eligibility and disciplinary cases. The thirty-five new offenses that were recommended by the Committee and approved by the Board are offenses that Board Staff have identified over the last few years during its review of eligibility and disciplinary files. These offenses have occurred frequently enough over the last few years to warrant inclusion in the Guidelines. Further, the Board has determined that these additional offenses are sufficiently related to the practice of nursing and are serious enough in nature to warrant investigation and, possibly, denial of licensure and/or licensure discipline.

In addition to including these additional crimes in the Guidelines, corresponding sanction recommendations and explanatory rationale has been included as well. For example, the felony offense of intoxication manslaughter has been added to the Guidelines. As stated in the Guideline's preamble, although the Guidelines provide a recommended range of sanctions for each offense, each case is considered on its own merits. As such, the appropriate sanction in any given case will be determined upon a consideration of the aggravating and/or mitigating factors present in that case. For the offense of felony intoxication manslaughter, and depending upon the length of time that has transpired since the judicial order associated with the offense was issued, the recommended sanction range includes licensure denial or revocation, as well as options for licensure discipline. The remaining additional offenses that have been added to the Guidelines also include a corresponding recommended range of sanctions that will include an analysis of the mitigating and/or aggravating factors unique to each case.

The Guidelines also explain how each of the additional offenses are related to the practice of nursing. Using the previous ex-

ample, criminal offenses involving alcohol and/or drugs, such as felony intoxication manslaughter, may indicate that an individual has a chemical dependency and/or substance abuse issue. Chemical dependency and/or substance abuse may affect an individual's professional judgment and ability to practice nursing with reasonable skill and safety. As such, the Board is concerned about such conduct, and an individual with this criminal history may be subject to a Board investigation to determine what effect, if any, the offense will have on the individual's licensure status. The remaining additional offenses that have been added to the Guidelines also include an explanation of how the offense relates to the practice of nursing.

Finally, the Guidelines indicate when a particular evaluation may be required and/or requested by the Board. Pursuant to the Occupations Code §301.4521, the Board is authorized to require certain physical and/or psychological evaluations of its applicants and licensees. In the present example regarding the felony offense of intoxication manslaughter, the Guidelines specify that a chemical dependency evaluation may be required to assist the Board in determining the effect of the individual's criminal history on his/her licensure status. Although §301.4521 authorizes the Board to require and/or request physical and psychological evaluations in situations where the Board has reason to believe that an individual may be unable to practice nursing with reasonable skill and safety, additional notations have been added throughout the Guidelines to indicate the types of evaluations that the Board may request/require in matters involving a particular criminal offense. Although this additional information does not limit the Board's ability to require/request additional types of evaluations in a particular case, it is intended to provide notice to individuals that an evaluation may be required and/or requested in order to assist the Board in determining whether the individual is fit to practice nursing safely and the potential effect the particular criminal offense may have on the individual's licensure status.

The Committee also felt it was important for the Board to reiterate the purpose of the Guidelines and to emphasize their limitations. To that end, pages 1 - 3 of the Guidelines have been amended to include additional information regarding the application of the Guidelines. The Guidelines are intended to inform applicants, licensees, and the general public of the potential effect a particular criminal offense may have on nurse licensure. As such, the Guidelines are based upon criminal offenses that have already been addressed and/or adjudicated by the penal system. The Board will not re-litigate the underlying facts of the criminal matter. Therefore, the amended language makes clear that the Board will consider the potential effect of a criminal offense upon an individual's licensure status as that offense has been previously determined by the penal system.

For certain offense, the Committee also recommended including additional information in the last column of the Guidelines to better explain the offense's connection to the practice of nursing. For example, for the offenses of "arson" and "cruelty to animals," information has been added to the last column of the Guidelines to emphasize that individuals who commit these types of criminal offenses have been linked with underlying psychopathology and/or may be more likely to engage in violent/harmful behaviors toward humans. This additional information clarifies why the Board may be concerned about an individual who has committed one of these offenses. "Aggravated perjury" and all of the prostitution offenses also include additional language better explaining their connection to the practice of nursing.

The Committee also reviewed the recommended range of sanction for each offense listed in the Guidelines. Although the Committee felt that the recommended ranges of sanctions were appropriate for the majority of the offenses, the Committee recommended that offenses primarily related to the use of drugs and/or alcohol be amended to include less severe sanctions if the individual demonstrates compliance with a treatment program and evidence of ongoing sobriety. Therefore, the Guidelines have been amended to include a broader range of recommended sanctions for these types of offenses. In particular, the amended range of sanctions for these types of offenses includes participation in a peer assistance program, as well as licensure suspension, which can either be enforced or probated, depending upon whether an individual is able to demonstrate twelve consecutive months of verifiable sobriety. These additional options are consistent with the Board's adopted Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, as well as the Board's rules regarding chemical dependency and substance abuse.

The Guidelines have also been amended to clarify the use of certain terminology within the Guidelines. In particular, the term "judicial order" has been amended to include orders of conviction, regardless of the plea entered, deferred adjudications, regardless of the plea entered, and deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions. Further, the term "probation" has been amended to include community supervision, probation, parole, and any other requirement that results from, or is related to, a criminal disposition of any form, including deferred dispositions, such as pre-trial diversion agreements and deferred prosecutions. These amendments are intended to clarify the existing intent of the Guidelines and are consistent with the Board's authority to investigate and take licensure action based upon convictions and deferred dispositions, as set forth in the Nursing Practice Act, particularly §301.452(b)(3).

Finally, the Guidelines have been re-organized based upon recommendations by the Committee. Pages 4 - 14 of the Guidelines contain offenses that have been specifically identified by the Texas Legislature in the Occupations Code §301.4535 as revocable offenses and/or potential bars to licensure. Pursuant to the terms of §301.4535, an individual who has committed one of the crimes enumerated in §301.4535 shall not be eligible to hold a nursing license until at least five years have passed from the date the individual successfully completes and is dismissed from community supervision or parole. The remaining pages of the Guidelines are arranged alphabetically, to include both felony and misdemeanor offenses. If an offense can be classified under the penal code as either a felony or misdemeanor, the Guidelines recognize this distinction and include a corresponding range of recommended sanctions for the felony offense and the misdemeanor offense. The Committee also recommended including the definition of each crime in the first column of the Guidelines instead of the last column of the Guidelines. As such, the Guidelines have been amended to include a general definition, based upon the elements listed in the penal code, for each offense listed in the Guidelines. A legend has also been added to the second column of the Guidelines that will link a user to the penal code definitions and classifications of the terms "felonies" and "misdemeanors". Hyperlinks have also been added to the third column of the Guidelines that will link a user to the specific penal code provisions cited by the Guidelines for each criminal offense. These changes were recommended by the Committee

and adopted by the Board in order to make the Guidelines more user friendly and easier to understand and navigate.

The amended Guidelines, which are incorporated by reference into this rule proposal, are published in the "In Addition" section of this issue of the *Texas Register*.

The proposal also includes amendments to §213.33(b) that update the Board's website address where the Guidelines may be accessed. The Board's Disciplinary Matrix, which incorporates these changes, is published in the "Tables & Graphics" section of this issue of the *Texas Register*.

Section-by-Section Overview.

Proposed amended §213.33(b) provides the corrected website address where the Guidelines may be accessed.

Proposed amended §213.33(g)(5) provides that the amended Guidelines must be used by the State Office of Administrative Hearings (SOAH) and the Board in determining the appropriate penalty/sanction in disciplinary and eligibility matters.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits. The anticipated public benefits will be the adoption of requirements that implement the provisions of the Occupations Code Chapters 53 and 301 and promote fairness, consistency, efficiency, and predictability in Board decisions regarding eligibility and disciplinary matters.

The proposed amendments incorporate the use of the Guidelines in eligibility and disciplinary matters before the Board. In particular, the proposed amendments incorporate the use of the Guidelines in determining the appropriate penalty/sanction in eligibility and disciplinary matters. The Guidelines identify specific criminal offenses that are of concern to the Board, as well as provide notice of the potential consequences of these criminal offenses to licensees and the general public. Providing advance notice of the potential consequences of such conduct promotes fair, consistent, and efficient regulation and helps ensure consistency among Board decisions in eligibility and disciplinary matters for similarly situated individuals.

Potential Costs for Individuals Required to Comply with the Proposal. The proposed amendments incorporate the Guidelines into Board rule. The Guidelines provide notice to applicants, licensees, and the general public of the potential consequences of a criminal offense on an individual's nursing licensure status. The proposed amendments require SOAH and the Board to utilize the Guidelines in determining the appropriate penalty/sanction in eligibility and disciplinary matters. However, the Guidelines do not impose any requirements or conditions on any applicant, licensee, or Board regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required

to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) states that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by §53.021(d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of §53.021 if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of §53.021 regardless of whether the proceedings were dismissed and the person was discharged as described by §53.021(c) if, after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that: (i) the person may pose a continued threat to public safety; or (ii) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) states that §53.021(c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide: (i) law enforcement or public health,

education, or safety services; or (ii) financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (iii) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that, in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022: (i) the extent and nature of the person's past criminal activity; (ii) the age of the person when the crime was committed; (iii) the amount of time that has elapsed since the person's last criminal activity; (iv) the conduct and work activity of the person before and after the criminal activity; (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (vi) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by §53.023(a)(6).

Section 53.023(c) states that in addition to fulfilling the requirements of §53.023(b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has: (i) maintained a record of steady employment; (ii) supported the applicant's dependents; (iii) maintained a record of good conduct; and (iv) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) states that each licensing authority shall issue guidelines relating to the practice of the licensing authority under Chapter 53. Further, the guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) states that a state licensing authority that issues guidelines under §53.025 shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Section 53.025(c) states that a local or county licensing authority that issues guidelines under §53.025 shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having county-wide circulation in that county.

Section 53.025(d) provides that amendments to the guidelines, if any, shall be issued annually.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate

the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of Subtitle E are stricter than the requirements of Chapter 53.

Section 301.1545(b) states that, in its rules under §301.1545, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under Chapter 301.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term "applicant" as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term "evaluation" as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

Section 301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by SOAH. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license.

Section 301.4521(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by SOAH under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order.

Section 301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously

complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under Section 22.011, Penal Code; (iv) aggravated sexual assault under Section 22.021, Penal Code; (v) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (vi) aggravated assault under Section 22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (ix) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under Section 25.07, Penal Code, punished as a felony; (xi) an offense under Section 25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under Section 25.031, Penal Code; (xiii) the sale or purchase of a child under Section 25.08, Penal Code; (xiv) robbery under Section 29.02, Penal Code; (xv) aggravated robbery under Section 29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) states that on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

Cross Reference to Statute.

The following statutes are affected by this proposal: the Occupations Code Chapter 53 and §§301.151, 301.1545, 301.452, 301.4521, 301.453, 301.4531, and 301.4535.

§213.33. *Factors Considered for Imposition of Penalties/Sanctions.*

(a) (No change.)

(b) The Disciplinary Matrix is as follows:

Figure: 22 TAC §213.33(b)

(c) - (f) (No change.)

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) - (4) (No change.)

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published [on March 9, 2007] in the May 17, 2013, issue of the *Texas Register* [(32 TexReg 1409)] and available on the Board's website at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html> [<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>].

(h) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301766

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 305-6822



CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.14

Introduction. The Texas Board of Nursing (Board) proposes amendments to §217.14, concerning Registered Nurses Performing Radiologic Procedures. The amendments are proposed under the authority of the Occupations Code §301.151 and §601.253 and update outdated references in the rule.

Section-by-Section Overview. Proposed amended §217.14(a) updates the reference to The Joint Commission and provides that a registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by the Joint Commission must submit an application for registration to the Board.

Proposed amended §217.14(d) updates references to the applicable rules of the Texas Department of State Health Services and correctly references the Medical Radiologic Technologist Certification Act. The amended rule provides that the registered nurse whose functions include radiologic procedures must act within the scope of the Nursing Practice Act and the Board's rules and must comply with the training requirements and limitations of the Medical Radiologic Technologist Certification Act and the Texas Department of State Health Services rules, 25 TAC §§140.517 - 140.522. In addition, proposed amended

§217.14(d) requires the registered nurse to be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any applicable laws of the State of Texas.

Proposed amended §217.14(e) provides that any nurse who violates the Board's rules shall be subject to disciplinary action by the Board under the Occupations Code Chapter 301 and the Board's rules.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of current, updated requirements.

The proposed amendments update references in the existing rule. The proposed amendments do not impose any new requirements or conditions on any applicant, licensee, or Board-regulated individual or entity. Therefore, the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board-regulated entity, or other entity required to comply with the proposal because there are no probable costs associated with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 17, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority.

The amendments are proposed under the Occupations Code §301.151 and §601.253.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii)

establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 601.253(a) provides that the Board may adopt rules governing registered nurses performing radiologic procedures under §601.151 or §601.154 and shall require registered nurses performing radiologic procedures under §601.151 to register with the Board and to identify the practitioner ordering the procedures.

Section 601.253(b) states that the Board shall notify the agency licensing the practitioner that the nurse has registered under §601.253.

Cross Reference to Statute.

The following statutes are affected by this proposal: Occupations Code §301.151 and §601.253.

§217.14. Registered Nurses Performing Radiologic Procedures.

(a) A registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by The [the] Joint Commission [on Accreditation of Hospitals] shall submit an application for registration to the board and shall submit evidence including, but not limited to, the following:

(1) - (2) (No change.)

(b) - (c) (No change.)

(d) The registered nurse whose functions include radiologic procedures must act within the scope of the Texas Nursing Practice Act and the Board's rules [Rules] and shall comply with the training requirements and limitations of the Medical Radiologic [Radiological] Technologist Certification Act and the Texas Department of State Health Rules, 25 TAC §§140.517 - 140.522 [§§143.15 - 143.20]. In addition, the registered nurse must be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and [or] any applicable laws of the State of Texas.

(e) Any nurse who violates these rules shall be subject to disciplinary action by the board under the Occupations Code Chapter 301 and the Board's rules [Texas Civil Statutes, Article 4525].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301780

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 16, 2013

For further information, please call: (512) 305-6822

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The Texas Medical Board withdraws the proposed amendment to §187.18 which appeared in the May 10, 2013, issue of the *Texas Register* (38 TexReg 2822).

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301790

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

For further information, please call: (512) 305-7016

CHAPTER 197. EMERGENCY MEDICAL SERVICE

22 TAC §197.5

The Texas Medical Board withdraws the proposed amendment to §197.5 which appeared in the May 10, 2013, issue of the *Texas Register* (38 TexReg 2822).

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301791

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 6, 2013

For further information, please call: (512) 305-7016

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS

SUBCHAPTER A. CHOOSE LIFE GRANT PROGRAM

The Office of the Attorney General (OAG) adopts new Chapter 54, Subchapter A, Division 1, §§54.1 - 54.15, concerning General Provisions and Eligibility; Division 2, §§54.20 - 54.24, concerning Grant Application and Decision Process; Division 3, §§54.30 - 54.39, concerning Grant Budget Requirements; Division 4, §§54.45 and §54.46, concerning Application Kit; Resolution of Governing Body; Division 5, §§54.50 - 54.59, concerning Grant Administration; and Division 6, §§54.65 - 54.68, concerning Grant Monitoring and Auditing. New Chapter 54, Special Programs, Subchapter A is adopted without changes to the proposed text as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2067) and will not be republished.

The new sections are adopted to implement and administer the OAG's Choose Life grant program.

No comments were received regarding adoption of the new sections during the comment period.

DIVISION 1. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§54.1 - 54.15

The new sections are adopted in accordance with Texas Government Code §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301783

Katherine Cary

General Counsel

Office of the Attorney General

Effective date: May 26, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 936-1180



DIVISION 2. GRANT APPLICATION AND DECISION PROCESS

1 TAC §§54.20 - 54.24

The new sections are adopted in accordance with Texas Government Code §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301784

Katherine Cary

General Counsel

Office of the Attorney General

Effective date: May 26, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 936-1180



DIVISION 3. GRANT BUDGET REQUIREMENTS

1 TAC §§54.30 - 54.39

The new sections are adopted in accordance with Texas Government Code §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301785

Katherine Cary

General Counsel

Office of the Attorney General

Effective date: May 26, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 936-1180



DIVISION 4. APPLICATION KIT; RESOLUTION OF GOVERNING BODY

1 TAC §§54.45, §54.46

The new sections are adopted in accordance with Texas Government Code §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301786

Katherine Cary

General Counsel

Office of the Attorney General

Effective date: May 26, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 936-1180



DIVISION 5. GRANT ADMINISTRATION

1 TAC §§54.50 - 54.59

The new sections are adopted in accordance with Texas Government Code §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301787

Katherine Cary

General Counsel

Office of the Attorney General

Effective date: May 26, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 936-1180



DIVISION 6. GRANT MONITORING AND AUDITING

1 TAC §§54.65 - 54.68

The new sections are adopted in accordance with Texas Government Code §402.036(e), which authorizes the OAG to adopt rules necessary to establish guidelines for the expenditure of funds under the Choose Life grant program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301788

Katherine Cary

General Counsel

Office of the Attorney General

Effective date: May 26, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 936-1180



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.310, concerning Reimbursement Methodology for Customized Equipment, and new §355.748, concerning Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Level II Evaluations. The amendment and new section are adopted without changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1073) and will not be republished.

Background and Justification

The changes to the PASRR program are a result of a Centers for Medicare and Medicaid Services (CMS) directive for the State to become fully compliant with federal requirements at Title 42 of the Code of Federal Regulations, Part 483, Subpart C, governing the State's responsibility for preadmission screening and resident review of individuals with mental illness (MI) or an intellectual or developmental disability (IDD). In order to comply with the federal requirements, the Department of Aging and Disability Services has revised the PASRR Level II evaluation to determine if a person believed to have MI or IDD requires the level of care provided by a nursing facility (NF) and, if so, whether they need specialized services for their MI or IDD.

In response to the programmatic changes, new §355.748 is adopted to provide the reimbursement methodology used to determine reimbursement rates for qualified providers conducting the evaluation to identify individuals eligible for PASRR services.

The amendment to §355.310 is adopted to revise the title of the section and to include a reimbursement methodology for customized adaptive aids to codify current agency policies and procedures in rule.

In addition, HHSC is renaming Subchapter F in order to use person first respectful language, replacing "mental retardation" with "an intellectual or developmental disability."

Comments

The 30-day comment period ended March 24, 2013. During this period, HHSC did not receive any comments regarding the proposed amendment or the new rule.

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.310

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources

Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301737

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 424-6900



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.748

Statutory Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301738

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 424-6900



TITLE 13. CULTURAL RESOURCES PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 25. OFFICE OF THE STATE ARCHEOLOGIST

13 TAC §§25.1 - 25.7

The Texas Historical Commission (THC) adopts the repeal of Chapter 25, §§25.1 - 25.7, concerning the Office of the State Archeologist, without changes to the proposal as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1292). New §§25.1 - 25.8 will replace the repealed sections, and they are contemporaneously adopted in this issue of the *Texas Register*.

The repeal is adopted in an effort to eliminate outdated terminology and procedures and will be replaced with new sections to implement necessary updates, additions and changes to more precisely reflect the programs and procedures of the THC's State Archeological Program, formerly known as the Office of the State Archeologist.

No public comments were received regarding the repeal.

The repeal is adopted under §442.007(q) of the Texas Government Code, which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The repeal implements §442.007 of the Texas Government Code. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301703

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-1858



CHAPTER 25. STATE ARCHEOLOGICAL PROGRAM

13 TAC §§25.1 - 25.8

The Texas Historical Commission (THC) adopts new §§25.1 - 25.8, concerning the State Archeological Program. Sections 25.1, 25.6, and 25.7 are adopted with changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1292). Sections 25.2 - 25.5 and §25.8 are adopted without changes to the proposed text and will not be republished.

The new §§25.1 - 25.8 eliminate outdated terminology and procedures and provide necessary updates, additions and streamlining to more precisely reflect the programs and procedures of the THC's State Archeological Program, formerly known as the Office of the State Archeologist. Additionally, the chapter title has been changed from "Office of the State Archeologist" to "State Archeological Program."

Corrections were made to §§25.1, 25.6 and 25.7. Specifically, §25.1(5) and §25.7(b) contained typographical errors; and the word "rules" was accidentally omitted from the text of §25.6(c)(2) in the proposal.

No written comments were received regarding the new sections.

The new sections are adopted under §442.005(q) and §442.007(c) of the Texas Government Code, which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

§25.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Antiquities--The tangible artifacts and objects of the past that relate to human life and culture.

(2) Archeological investigation--Any research activity applied to archeological sites and the material remains in or removed from such sites, including survey, excavation, documentation, conservation, mapping, and analysis.

(3) Archeological preservation--The protection and conservation of the archeological and heritage of Texas.

(4) Archeological site--Any land or marine-based place that contains material remains of past human life or activities in their original or historical context that are at least 50 years of age or a place that has been determined by the commission to be of transcendent historical or cultural significance.

(5) Archeology division--A division of the commission that includes the office of the state archeologist.

(6) Artifact--A tangible object that relates to human life and culture of the past. Examples include, but are not limited to items constructed, altered, created, or used by humans. Paleontological remains and geological specimens are not included unless occurring in or related to an archeological context.

(7) Avocational archeologist--Any individual with demonstrated training, skill and/or experience in archeological investigation who is not a professional archeologist.

(8) Conservation easement--A nonpossessory interest in real property that imposes limitations or affirmative obligations on the person holding the possessory or fee interest, as defined and authorized in Texas Natural Resources Code Chapter 183.

(9) Curatorial facility--A museum or repository that holds and maintains archeological collections.

(10) Historic preservation--The protection and conservation of the archeological and historical heritage of Texas.

(11) Historic resource--Any site, complex, building or structural remains of historical or archeological interest and its contents. Examples include, but are not limited to, prehistoric habitation sites, mounds, open campsites and rock shelters; mines, quarry areas and lithic procurement areas; game procurement and processing sites; petroglyph and pictograph sites; historic shipwrecks; remnants of historic buildings and structures; cemeteries; dumps and trash heaps; and military sites. Only resources at least 50 years old, or which have been determined by the state archeologist to be of transcendent historic importance, are considered historical resources within the meaning of this chapter.

(12) History (historic, historical)--The recording and study of past cultures, events, or resources created in the past and includes prehistory, relating to events occurring prior to written history.

(13) Inventory of sites--Any form of tabulating, collecting, and holding archeological site records, and all activities which maintain that inventory, including restricted data contained within the Texas Historic Sites Atlas electronic database.

(14) Professional archeologist--An archeologist certified by the Register of Professional Archeologists (RPA) for the level of required investigation; anyone determined a professional archeologist by the state archeologist, according to the criteria of the RPA; or anyone meeting required qualifications and standards detailed in pertinent state rules (§26.4 of this title) or federal requirements specified in the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61, Appendix A) for archeological investigations.

(15) Site records--All data and information relating to the character, condition, and location of any archeological site or other historic resource and all data and information pertinent to collections of material remains. Site records include, but are not limited to, artifact catalogues, photographs, digital imagery, maps, spatial imagery, notes, drawings, site data forms, TexSite electronic forms, documents, audio data, and electronic data.

(16) State archeologist--The position authorized by Texas Government Code §442.007, responsible for the administration of the state archeological program.

(17) Steward--A current member of the Texas Archeological Stewardship Network.

(18) Texas Archeological Stewardship Network or TASN--A volunteer program administered by the commission. The TASN is composed of volunteer avocational archeologists selected for their demonstrated skills, experience and abilities to assist the commission with archeological investigations, research, preservation efforts, training, and public outreach endeavors.

(19) TexSite form--The standardized electronic form for recording archeological site information as developed by the commission and Texas Archeological Research Laboratory of The University of Texas.

§25.6. Collections.

(a) Maintenance. The commission will do the following:

(1) maintain collections recovered by the archeology division for the period of time required for their processing, analysis, and adequate reporting;

(2) maintain collections on loan to the archeology division for the period of time required for their processing, analysis, and adequate reporting and return or place such collections according to the terms of the loan agreement entered into with the collection owner;

(3) maintain on a temporary basis, collections recovered by other organizations or individuals from archeological sites in Texas that the archeology division agrees to accept for placement in an appropriate curatorial facility;

(4) refer to curatorial facilities all other requests from individuals, institutions, organizations, and agencies for collections placement; and

(5) maintain on a permanent basis only those collections falling within its responsibilities, for which no permanent repository can be found, and/or for comparative analysis.

(b) Curatorial facilities. In seeking curatorial facilities for collections held in temporary custody, the archeology division will observe the following procedures.

(1) All collections transferred by this office to a curatorial facility will include copies of all pertinent site records.

(2) Curatorial facilities will be identified by this office according to the criteria of existing state and federal standards for curation.

(3) For state held-in-trust collections, placement will be in accordance with the requirements specified in Chapter 29 of this title (relating to Management and Care of Artifacts and Collections).

(4) For collections that do not meet the state held-in-trust criteria, preference will be given in accordance with the following criteria:

(A) curatorial facilities that are in the region from which the collections were recovered;

(B) curatorial facilities that maintain procedures for access to collections and site records that prevent disclosure of information harmful to the resources involved;

(C) curatorial facilities that facilitate scientific, archeological research;

(D) curatorial facilities that observe state and/or federal standards for curation; and

(E) repositories in the State of Texas.

(5) Transfer of collections to curatorial facilities will be made under the terms of a written agreement between the facility and the commission. The agreement will include an inventory of transferred items, and its terms will be guided by the pertinent state or federal standards for curation. The agreement will provide that, should a repository fail to maintain the integrity of collections provided by the commission, or to protect them adequately, the repository will notify the commission so that other arrangements can be made for the collections.

(6) Pertinent data concerning collections, related site records, and the sites of resources from which the collections were made may be retained in the commission's inventory of archeological resources, and no transfer agreement will be made that prohibits the commission from retaining data and information.

(c) Human skeletal remains.

(1) This office will not publicly exhibit human skeletal remains recovered from archeological sites, and it will discourage the public exhibition of human skeletal remains recovered from archeological sites by others.

(2) Human skeletal remains and associated artifacts will be handled in a manner that complies with applicable state and federal laws, rules and regulations.

(d) Artifact identification. This office will not assist in the identification of unprovenienced artifacts.

(e) Appraisals. This office will not appraise collections or artifacts for private citizens, corporations, or organizations or retain an appraiser for or refer an appraiser to the private citizen, corporation or organization. THC personnel may evaluate state-associated collections for in-house purposes. Donors requiring appraisals for income tax purposes must obtain an appraisal at their own expense from an appraiser of their choice prior to donation. In-house evaluation of state-associated collections or artifacts retained at the commission's facilities

for insurance purposes, traveling exhibits or activities within the professional community are professional assessments and not appraisals. In-house evaluations are the responsibility of the agency.

§25.7. Protection of Archeological Sites.

(a) Purpose. The purpose of this section is to preserve archeological sites through the implementation of preservation designations, conservation easements, or through the acquisition of real property by donation or purchase.

(b) Assessment and selection. Selection of sites for protection is made by the archeology division on the basis of an assessment of site significance and integrity as stated in §25.2 of this title (relating to Determination of Significance). Priority is given to significant sites that are threatened with damage or destruction. Assessment and selection of sites for protection may be made in cooperation with individuals, institutions, non-profit organizations, corporations, and/or state or federal agencies.

(c) Factors influencing selections include the following:

(1) potential to contribute to a better understanding of Texas history;

(2) importance of the site within the context of a regional culture area; and

(3) public education and interpretation potential of the site(s).

(d) For proposed donations and purchases, assessments and recommendations may also take fiscal implications and other pertinent information into account.

(e) Protection procedures. The following procedures will be followed:

(1) All protective measures for sites on privately owned land will be undertaken only with the full and voluntary cooperation of the owner(s).

(2) The owner(s) will be informed of the archeological significance of the sites located on their property and of the various options available to ensure long-term preservation.

(3) The alternatives for long-term preservation include, but are not limited to, the following:

(A) donation of the property to the state or to a suitable nonprofit organization;

(B) purchase of the property by the state or a suitable nonprofit organization;

(C) assignment of a conservation easement (Conservation Easement Act, Texas Natural Resources Code, Chapter 183) by owner(s) to the state or qualified nonprofit organization;

(D) designation of the property as a state antiquities landmark; and

(E) nomination of the property to the National Register of Historic Places.

(4) Where an archeological site or property containing one or more archeological sites is acquired for the state through donation or purchase by the commission, the following conditions shall apply.

(A) The donation will be unconditional and will reflect full ownership by the state.

(B) The donation may consist of surface rights only. Mineral rights in such instances will be retained by the landowner with the stipulation that all contained archeological deposits will be pro-

ected against any form of land-altering mineral exploration and development. In the case of donations that include mineral rights, such rights will be managed by the General Land Office of Texas.

(C) THC commissioners will consider proposals for donation or purchase and vote to either accept or decline the property acquisition.

(D) The property to be acquired will be limited to those areas containing archeological deposits; any immediately adjacent or contained natural features having direct relevance to human occupation of the site, such as springs, bedrock exposures, or flint outcrops; and to access corridors.

(E) The commission may provide for legal survey, legal description, and deed recording of the acquired property.

(F) The commission will supply documentation to the landowner or other entity as required to facilitate available benefits.

(5) These conditions do not apply to the acquisition of property through donation or purchase to a commission historic site, actions which are governed by the requirements set out in Chapter 16 of this title for commission historic sites.

(f) The commission will initiate measures, including the following, to provide for the long-term protection of archeological sites. Measures may include but are not limited to:

(1) appointment of a local professional archeologist, steward, or other avocational archeologist to examine the property at regular intervals and to report any acts of vandalism or other damaging activity;

(2) notification of local law-enforcement officials of the property's protected status to encourage enforcement of applicable laws; and

(3) placement of permanent signs or markers, if the placement of such signs or markers does not constitute a threat of harm to the resource.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301704

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-1858



CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §§26.1 - 26.22, 26.24, 26.25, 26.27

The Texas Historical Commission (THC) adopts the repeal of Chapter 26, §§26.1 - 26.22, 26.24, 26.25, and 26.27, concerning Practice and Procedure, without changes to the proposal as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1296).

The repeal is adopted as a means of updating and streamlining the chapter which has not been thoroughly revised since 1985.

A new Chapter 26 is adopted simultaneously with the repeal in this issue of the *Texas Register*.

No public comments were received regarding the repeal.

The repeal is adopted under §442.005(b) and (q) of the Texas Government Code and §191.052 of the Texas Natural Resources Code which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301697

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-1858



CHAPTER 26. PRACTICE AND PROCEDURE

The Texas Historical Commission (THC) adopts new §§26.1 - 26.27, concerning Practice and Procedure. Sections 26.4, 26.8, 26.15, 26.21, and 26.25 - 26.27 are adopted with changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1297). Sections 26.1 - 26.3, 26.5 - 26.7, 26.9 - 26.14, 26.16 - 26.20, and 26.22 - 26.24 are adopted without changes to the proposed text as published and will not be republished.

New §§26.1 - 26.27 update, reorganize, and streamline this chapter by creating separate subchapters related to general provisions (Subchapter A), identification and designation of landmarks (Subchapter B), archeology (Subchapter C), historic buildings and structures (Subchapter D), and memoranda of understanding with other state agencies (Subchapter E). Additionally, the term State Archeological Landmark is changed to State Antiquities Landmark to reflect the fact that both buildings and archeological sites can be designated as landmarks.

Corrections were made to §§26.4, 26.8, 26.15, and 26.21. Specifically, a typographical error was made in §26.4 leaving out the words "and/or" and thus created the unintended prerequisite that Principal Investigators must be "Registered Professional Archeologists." Additionally, the word "structures" was accidentally omitted from the text of §26.8(a)(1); §26.15(2)(E) contained a typographical error; and §26.21(i) contained an incorrect reference.

Section 26.25 was amended because the THC and the Texas Department of Transportation (TxDOT) have agreed to minor editing modifications to the new MOU between the two agencies. Specifically, §26.25(b), (d) - (h), (j), (k), (o), (r), (t), and (u) were amended to correct incorrect subsection citations and TxDOT rule citations and spelling errors. These changes were made in response to TxDOT comments.

Section 26.26 was amended because the THC and the Texas Water Development Board have agreed to minor editing modifi-

cations to the new MOU between the two agencies. Specifically, §26.26(a)(1) and (6) were amended to add references to historic buildings. These changes were made in response to Texas Water Development Board comments.

Section 26.27 was amended because the THC and the Texas Parks and Wildlife Department (TPWD) have agreed to a minor editing modification to the new MOU between the two agencies. Specifically, §26.27(c)(6)(E) was amended to clarify that the Cultural Resources Program Director of TPWD could use a designee when compiling and editing annual reports. These changes were made in response to TPWD comments.

In addition to the comments discussed above, only one written comment was received on the proposed new Chapter 26 rules.

Comment: Regarding §26.4 (Professional Qualifications and Requirements), a recommendation was made that the THC should add definitions for architectural historian and historic architect meeting the Secretary of the Interior's Professional Qualifications Standards at 36 Code of Federal Regulations Part 61.

Response: The commission believes that §26.4 is adequate to address the professionals who may have a role under the Antiquities Code of Texas. This section includes the statement that "Any additional professions not referenced in this section must meet Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (As Amended and Annotated)," which includes the disciplines of architectural history and historic architecture in the section on Professional Qualifications Standards. The National Park Service is currently considering amendments and expansion of these standards, and any language added to match the current standards may become outdated before these rules are next revised.

Under the previous rules, the composition of the Antiquities Advisory Board included the governor-appointed professional archeologist, historian, and architect members of the commission. These specific positions no longer exist on the commission and are no longer included in §26.5 (Antiquities Advisory Board), but the definition of historian remains as this area of expertise may be of benefit in administering the Antiquities Code of Texas.

The Professional Qualifications and Requirements in §26.4 for project architect are similar but not identical to the Secretary of the Interior's Professional Qualifications Standards for historic architecture. Both standards require professional experience with historic preservation projects but the means of measuring that experience differ. For the sake of continuity for architects seeking Historic Buildings and Structures Permits under these rules, no changes to the definition of project architect were made.

SUBCHAPTER A. GENERAL PROVISIONS

13 TAC §§26.1 - 26.6

The new sections are adopted under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code, which provide the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

§26.4. Professional Qualifications and Requirements.

Professional personnel means individuals who are appropriately-trained specialists required to perform archeological and architectural investigations and project work. These individuals must possess the professional qualifications in this section and will be

required to perform certain responsibilities under the terms of an Antiquities Permit as identified in this section. Any additional professions not referenced in this section must meet Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (As Amended and Annotated).

(1) Principal investigator. A professional archeologist with demonstrated competence in field archeology and laboratory analysis, as well as experience in administration, logistics, personnel deployment, report publication, and fiscal management. In addition to these criteria the principal investigator shall:

(A) hold a graduate degree from an accredited institution of higher education in anthropology/archeology, or a closely related field such as geography, geology, or history, so long as the degree program also included formal training in archeological field methods, research, and site interpretation; have successfully completed investigations under an Antiquities Permit; and/or be registered as a professional archeologist by the Register of Professional Archeologists (RPA); and/or hold an active permit not in default;

(B) have at least twelve months of full-time experience in a supervisory role involving complete responsibility for a major portion of a project of comparable complexity to that which is to be undertaken under permit;

(C) have demonstrated the ability to disseminate the results of an archeological investigation in published form conforming to current professional standards;

(D) remain on-site a minimum of 25 percent of the time required for the field investigation, and whose name must appear on the project report;

(E) provide a field archeologist to supervise the field investigation in his or her absence; and

(F) testify concerning report findings in the interest of controversy or challenge.

(2) Professional archeologist. An individual who has a degree in anthropology, archeology or a closely related field if that degree also included formal training in archeological field methods, research, and site interpretation, conducts archeological investigations as a vocation, and whose primary source of income is from archeological work. Qualifications for specialized types of professional archeologists are listed in this paragraph.

(A) Prehistoric archeologist. An individual who is a professional archeologist and, in addition, meets the following conditions:

(i) has been trained in the field of prehistoric archeology;

(ii) has a minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain prehistoric (pre-16th century) archeological deposits; and

(iii) has published the results of those prehistoric archeological investigations.

(B) Historic archeologist. An individual who is a professional archeologist and, in addition, meets the following conditions:

(i) has been trained in the field of historical archeology;

(ii) has minimum experience of two comprehensive archeological field seasons of three to six months in length on arche-

ological site(s) that contain historic (post-16th century) archeological deposits; and

(iii) has published the results of those historical archeological investigations.

(C) Underwater archeologist. An individual who is a professional archeologist and, in addition, is a competent diver with a minimum of two full seasons of underwater archeological testing or excavation projects. Training and experience sufficient for safe and proficient use of the specialized underwater remote sensing survey, excavation and mapping techniques, and equipment are required.

(D) Underwater archeological surveyor. An individual who has training and experience sufficient for safe and proficient supervision of appropriate remote sensing survey equipment operation, as well as for interpretation of survey data to identify anomalies and geomorphic features that may have some probability of association with submerged aboriginal sites and sunken vessels. This individual may represent the archeological interests on board the survey vessel in the absence of an underwater archeologist, as defined in subparagraph (C) of this paragraph.

(3) Project architect. An individual who is a licensed architect and has had full-time experience in a supervisory role on at least one historic preservation project. The project architect must be involved, at a minimum, in 25 percent of the time required to develop plans and specifications and manage project work for a Historic Buildings and Structures Permit project and, when not involved with the project, must assign a qualified preservation specialist to supervise the preservation project. At the discretion of commission staff, other individuals may fulfill the role of project architect, as follows:

(A) A preservation specialist may serve in the place of the project architect if: all responsibilities of a project architect under this title will be fulfilled by the project preservation specialist; and all education and experience criteria for a preservation specialist are met.

(B) A project engineer may serve in the place of the project architect if: the scope of project work is limited to structural stabilization and repair; all responsibilities of a project architect under this title will be fulfilled by the project engineer; and all education and experience criteria for a project engineer are met.

(C) A landscape architect may serve in the place of the project architect if: the project scope is limited to landscape architecture; all responsibilities of a project architect under this title will be fulfilled by the project landscape architect; and all education and experience criteria for a project landscape architect are met.

(D) A project contractor may serve in the place of a project architect if: the project scope of work is limited to the demonstrated professional expertise of the contractor; all responsibilities of a project architect under this title will be fulfilled by the project contractor; and all the requirements for a project contractor are met.

(4) Preservation specialist. An individual who has a professional degree in architecture or a state license to practice architecture, plus one or more of the following:

(A) at least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

(B) at least one year of full-time professional experience on historic preservation projects to include experience on projects similar to the project to be permitted; detailed investigations of historic buildings and structures; preparation of historic structures research reports; and preparation of plans and specifications for preservation projects.

(5) Project engineer. An individual who is a licensed civil or structural engineer and has had full-time experience in a supervisory role on at least one historic preservation project similar to the project to be permitted.

(6) Project landscape architect. An individual who is a licensed landscape architect and has had full-time experience in a supervisory role on at least one historic preservation project similar to the project to be permitted.

(7) Project contractor. An individual who has the appropriate training, certifications, and/or licenses for the type of project work specified in the permit application and at least one year of demonstrable full-time experience in applying the methods and practices of the proposed work on historic preservation projects similar to the project to be permitted.

(8) Historian. An individual who has a graduate degree in history or closely related field; or a bachelor's degree in history or a closely related field plus one of the following:

(A) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(B) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(9) Geomorphologist or geoarcheologist. An individual who holds a graduate degree in geology, geomorphology, archeology, or other closely related field, and has had sufficient training to adequately evaluate the sedimentology, stratigraphy, and pedology of deposits in the field and be competent to describe and analyze the deposits using standard terminology and methods. This person should also have general archeological experience in the area in which the investigations are to occur.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301698

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-1858



SUBCHAPTER B. IDENTIFICATION AND DESIGNATION OF LANDMARKS

13 TAC §§26.7 - 26.9

The new sections are adopted under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code, which provide the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

§26.8. *Designation Procedures for Publicly Owned Landmarks.*

(a) Nomination. Any group, public or private, individual, or public agency may submit a property in public ownership to the com-

mission for official designation as a landmark. The nomination must be submitted to the commission on a form approved by the commission, and the commission will determine whether the nomination is complete. The nomination shall indicate the nature of the property's significance: as an archeological site, shipwreck, cache or collection, historic building or structure, or any combination thereof, per the criteria for evaluation specified in §§26.10 - 26.12 and §26.19 of this title.

(1) Third-party nominations. Any private individual or private group that desires to nominate a property owned by a political subdivision as a landmark must complete and return to the commission a nomination form, and must give notice of the nomination at the individual's or group's own expense, in a newspaper of general circulation published in the city, town, or county in which the building, structure or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(A) be printed in 12-point boldface type;

(B) include the exact location of the building or site; and

(C) include the name of the group or individual nominating the building or site.

(D) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the commission with a nomination form. The commission will not consider a site owned by a political subdivision for designation as a landmark unless the notice and affidavit required by this section are attached to a nomination form. This notification must be received by both the commission and the public agency a minimum of 60 days prior to a regularly scheduled public meeting of the commission at which the nomination may be considered. All decisions regarding when a nomination will be considered by the commission will be made by the executive director of the commission.

(2) Requirements for buildings and structures. Nominations for buildings and structures must be accompanied by a deed or other legal description of the property nominated for designation. For a building or structure owned by a political subdivision, the nomination may be accompanied by a statement assessing fiscal impacts of the potential designation on the political subdivision.

(b) Evaluation. The executive director of the commission will determine whether the nomination is complete and acceptable, whether the property is eligible for designation, and when the nomination will be placed on the agenda of one of the commission's public meetings. In support of such determinations, the commission's staff will review the property according to the criteria for evaluation specified in §§26.10 - 26.12 and §26.19 of this title. Staff will recommend whether the nature of the property's significance indicated on the nomination form is accurate and if other areas should be considered.

(c) Notification of nomination. If the commission's staff wishes to nominate a property for landmark designation or intends to forward a nomination received for consideration, it must give the public agency or agencies that own the property a written notification that a nomination will be considered by the commission at one of its regularly scheduled public meetings. This notification must be received by the public agency a minimum of 15 days prior to the regularly scheduled public meeting of the commission at which the nomination is scheduled to be presented. The commission must also send the public agency complete site information on the proposed nomination. For a building or structure owned by a political subdivi-

sion, the notification will invite the political subdivision to submit a statement assessing the fiscal impacts of the potential designation.

(d) Interim protection and notification. Once a valid nomination for a landmark building or structure has been received and the commission's staff determines the property is eligible for designation, no project work may be undertaken on the property without a permit issued by the commission unless or until the commission denies the nomination or designation. Information regarding this protection will be included in the commission's notice on the nomination to the property owner.

(e) Presentation of nominations. Following staff evaluation and recommendations, nominations will be presented to the Antiquities Advisory Board. Written notice of the presentation will be sent to the owner. The Antiquities Advisory Board will review each nomination, the staff recommendations related to each nomination, and any testimony given by the owner of the property and the public at large. The Antiquities Advisory Board will then pass on its recommendations regarding each nomination to the commission. The chair of the Antiquities Advisory Board, or one of the other commission members who serve on the board, will present the nomination and recommendations to the commission at one of its public meetings.

(f) Comment period. No vote on final designation may be taken by the commission for a minimum period of 30 days, during which time all concerned parties may present evidence in support of or against designation of the property. Comments may be submitted to the commission at any time prior to the designation vote described in subsection (g) of this section, including during public testimony at the commission meeting where the vote will occur. Comments should address the property's merits in light of the criteria specified in §§26.10 - 26.12 and §26.19 of this title.

(1) Political subdivisions. Comments may address the fiscal impact on a political subdivision from the designation of a building or structure owned by the political subdivision, per §191.092(h) of the Texas Natural Resources Code.

(2) Institutions of higher education. Comments may address the impact on an institution of higher education from the designation of a building or land owned by the institution. If an institution of higher education notifies the commission during this timeframe that it protests to the proposed designation of a building or land under its control as a landmark, the matter becomes a contested case under the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001. The hearing officer and the commission will follow the procedures and take into account the criteria listed in §191.021(b) of the Texas Natural Resources Code. Weighing these criteria against the criteria specified in §§26.10 - 26.12 and §26.19 of this title, the commission shall designate a property under the control of an institution of higher education as a landmark only if the record before the commission establishes by clear and convincing evidence that such designation would be in the public interest.

(g) Presentation of designation and designation vote. After the minimum comment period of 30 days has elapsed, the commission may consider the property for designation at one of its public meetings. The owners of the property will be informed of the agenda by written notice at least 15 calendar days in advance of the meeting date. Any person may present evidence or testify at the meeting when the final decision is to be made. The commission may then vote to designate, to deny designation, to request further information, or to make any other decision.

(h) Additional evidence. If designation of a property is denied, the owner or applicant may present additional evidence at any time for

the commission's reconsideration. The new evidence will be considered by the commission at a duly-noticed meeting.

(i) Additional hearings. Any owner of a property designated as a landmark who is aggrieved by the designation procedure as applied to his or her property will receive a full evidentiary hearing upon request, or the formal designation can be removed by action of the commission.

(j) Notification of designation. Written notification of the commission's decision regarding the designation of a property as a landmark will be forwarded to the owner.

(k) Listing and marking of landmarks. If a property is officially designated as a landmark, the property will be listed in the commission's inventory, a current list of all historic buildings, structures, sites, objects, and districts so designated. Landmarks may be marked with a marker or medallion, to be installed by commission staff or designee.

(1) Archeological sites designated as landmarks may be marked with a landmark marker, if deemed appropriate by the commission. The UTM coordinate of the marker will be retained in the commission's records.

(2) Historic buildings and structures designated as landmarks may be marked with a medallion bearing the words "State Antiquities Landmark". Third-party nominators shall pay the cost associated with the medallion. A photograph of the installed medallion showing its context will be retained in the commission's records.

(l) Privileged or restricted information. The location of archeological sites is not public information. However, information on sites may be disclosed to qualified professionals as provided by Chapter 24 of this title (relating to Restricted Cultural Resource Information).

(m) For previously designated landmarks, commission staff may propose an amendment to clarify the designation boundaries, nature of the property's significance, or other information pertinent to the designation. The commission shall follow the process in this section in considering such an amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301699

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Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-1858



SUBCHAPTER C. ARCHEOLOGY

13 TAC §§26.10 - 26.18

The new sections are adopted under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code, which provide the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

§26.15. *Archeological Permit Categories.*

Several categories of permits oriented toward specific types of investigation are issued by the commission. The following is a list of permits associated with archeological investigations:

(1) Annual permit. A public agency or institution may be granted an Annual Permit, allowing for survey, recording, study, protection, stabilization, or conservation projects that cover a number of similar investigations at different locations. The annual permit will be issued for a specific period of time and may be developed by the public agency or institution, and the commission either under the auspices of a Memorandum of Understanding (MOU) or by means of a letter agreement. Annual Permits may also be used to govern the survey, recording, study, protection, stabilization, and conservation projects related to designated landmarks or eligible landmarks. The Annual Permit will adhere to, but not be limited to, the commission's rules. The standards described in an Annual Permit will be administered by a qualified archeologist on the staff of or contracted by that public agency or institution. The commission will be informed through an annual report of all projects completed under the authority of the Annual Permit with details adequate to confirm compliance.

(2) Alternative mitigation permit. A permit issued for a mitigation alternative may require additional conditions including studies, investigations, or other actions as deemed necessary by the commission, and will be specified in the terms and conditions of the permit. Permission for construction to proceed may be granted depending upon the satisfaction of the terms of the permit. Alternative forms of mitigation may include, but are not limited to:

(A) monitoring of a proposed construction project to record and report the discovery of unanticipated, important archeological deposits;

(B) conducting archival and historical research to document the significance of the site;

(C) capping or burying in place important archeological deposits if deemed appropriate by the commission;

(D) protecting significant remaining portions of a site by donation of the undisturbed area to a nonprofit organization, state agency, or a political subdivision of the state; and

(E) by acquisition and donation of a site or sites to a nonprofit organization, state agency, or a political subdivision of the state.

(3) Data recovery permit. This permit category is for the purpose of full investigation and extensive excavation of particular archeological site or sites. Data recovery must be based on a research design approved by the commission. The evidence from a skillfully accomplished archeological excavation provides a detailed picture of the human activities at the site; emphasis is placed on the information that can be elicited rather than on the artifacts. In data recovery, the archeological deposits are removed by digging and are, therefore destroyed. Permission for construction to proceed may be granted depending upon the results of this level of investigation. Specific requirements may be set forth by the commission in the permit. The destruction can be justified only if:

(A) it is done with such care that antiquities and cultural and environmental data in the area excavated are discovered, and if possible, preserved;

(B) information has been accurately recorded, whether its importance is immediately recognized or not, to remain available after the site has disappeared; and

(C) the record and results of the investigation are made available through publication.

(4) Emergency permit. A permit may be authorized by the commission for the purposes of performing investigations prior to formal application for a permit. Any of the above-referenced categories of investigations can be authorized under an emergency permit, but an emergency permit will only be issued under conditions where the investigations must be initiated or performed prior to the formal issuance of the permit. Legitimate emergency conditions include those situations when archeological deposits are discovered during development or other construction projects or under conditions of natural or man-made disasters that necessitate immediate action to deal with the situation and findings. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(5) Exhumation permit. The excavation of human burials or cemeteries and its associated funerary objects by a professional archeologist, or principal investigator in accordance with the Texas Health and Safety Code, Chapter 711.

(6) Intensive survey permit. This permit category is for the purpose of an intensive 100 percent pedestrian survey of a project or permit area. Components of an intensive survey may include, but are not limited to, archival research, pedestrian survey, shovel and/or mechanical subsurface probing, surface artifact inventories, site recordation, and site assessment. Such a survey can be performed in many ways but must, at a minimum, conform to the Archeological Survey Standards for Texas, which are available through the commission and the Council of Texas Archeologists. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(7) Monitoring permit. Unless otherwise specifically authorized by the commission, this permit category is for the purpose of having a professional archeologist on-site to observe construction activities that may or will damage cultural resources. The archeologist is required to report findings and impacts to sites to the commission. Monitoring may be conducted during or after other phases of archeological investigation and may not involve the need for a separate permit. However, if monitoring is the only investigation deemed necessary relative to a construction activity, then a monitoring permit will be required. If previously unrecorded and significant archeological deposits are recorded during a monitoring investigation, construction activities in the immediate area of the find must stop and the principal investigator must notify the Archeology Division of the find within 24 hours. Specific requirements of monitoring may be required by the commission as part of the permit.

(8) Preservation of rock art. This permit category is for the purposes of preserving, removing, recording, and copying all manner of rock art. Preservation techniques which involve application of brushes, heat, chemicals, water, chalk, petroleum products, or other preparations to the rock surfaces are prohibited unless specifically authorized by the commission. Specific requirements may be included by the commission as part of the permit.

(9) Reconnaissance survey permit. This permit category is for the purpose of location, inventory, and assessment of cultural resources of a specific area by conducting archival searches and by searching for sites. Reconnaissance is limited to recording site locations, mapping, photographing, controlled surface sampling, and possible limited shovel testing. A reconnaissance survey does not take the place of an intensive survey; it is used to determine whether an intensive survey will be warranted. Specific requirements may be imposed by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(10) Testing permit. This permit category is for the purpose of detailed subsurface examination of cultural resources including systematic test excavations of a particular site or area. Testing must be oriented toward sampling a representative portion of a particular site or sites and may be conducted to determine if a landmark contains significant materials. Specific requirements may be imposed by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(11) Underwater excavations permit. In order to fulfill justified research objectives, or if damage to significant historic and prehistoric sites cannot be avoided, a full-scale underwater archeological excavation must be carried out under the direct supervision of an underwater archeologist. The intensive investigation and excavation must include documentary research and, for shipwrecks, detailed magnetometer work. Excavations must be supported by adequate equipment and supplies to insure proper recording, preservation, and the recovery of the maximum amount of data. Thorough analysis and a complete report are required. Proper antiquities conservation is required for all artifacts, and all specimens recovered are state property. Specific requirements may be included by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(12) Underwater survey permit. Underwater resources include shipwrecks and submerged prehistoric and historic sites. Surveys for these cultural resources are conducted with electronic instrumentation including the proton magnetometer, side-scan and subbottom sonar, and positioning systems. In some instances divers, using scuba gear search for and examine a specific site or structure. Work is conducted under the direct supervision of an underwater archeologist or underwater archeological surveyor. Data acquired are to be rendered to the commission along with an analysis and report. Specific requirements may be included by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

(13) Underwater test excavations permit. Significant magnetic and/or acoustic anomalies discovered during survey must be tested by excavation under the direct supervision of an underwater archeologist in order to determine the source of the anomalies. Inspection by divers, coring, or other appropriate means must be used to test the nature of suspected prehistoric or historic sites. In the case of magnetic anomalies, sediment must be removed to allow identification, approximate dating, and determination of the importance of objects and sites found. Any artifacts recovered from state lands are property of the State of Texas. Extensive recovery during testing is discouraged. Accepted standards for provenience control and archeological data recovery must be maintained. Data must be analyzed and rendered to the commission in a written report. Proper conservation of any artifacts recovered must be carried out. Specific requirements may be required by the commission as part of the permit. Permission for construction to proceed may be granted depending upon the results of this level of investigation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.
TRD-201301700

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**SUBCHAPTER D. HISTORIC BUILDINGS
AND STRUCTURES**

13 TAC §§26.19 - 26.24

The new sections are adopted under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code, which provide the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

§26.21. Issuance and Restriction of Historic Buildings and Structures Permits.

(a) Permits are issued by the commission and must be signed by the executive director, the director of the Division of Architecture, or a designated representative. The executive director may choose to submit the permit application to the Antiquities Advisory Board for its consideration. Permits that are denied by commission staff may be appealed by the applicant to the Antiquities Advisory Board. The board shall review such applications at its next scheduled meeting, provided it shall have a minimum of 30 days to prepare for such review. Recommendations of the board shall be taken to the next scheduled meeting of the commission by the chairman of the board or by one of the other commissioners who serve on the board for action thereon.

(b) Terms and conditions. When a permit is issued, it will contain all standard and special terms and conditions governing the project work.

(c) Permit period. No permit will be issued for less than six months, nor more than ten years, but may be issued for any length of time within those limits as deemed necessary by the commission in consultation with the applicant and project architect.

(d) Transferal of permits. No permit issued by the commission will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without the consent of the commission.

(e) Permit expiration. The expiration date is specified in each permit and is the date by which all project work must be complete, including submission of the required completion report and fulfillment of all terms and conditions of the permit. It is the responsibility of the permittee, project architect, and professional firm to meet any and all permit terms and conditions prior to the expiration date listed on the permit.

(1) Expiration notification. The permittee and project architect will be notified 60 days in advance of permit expiration.

(2) Expiration extension. The permittee or project architect must provide a written request to the commission if an extension of the final due date for completion of the permit is desired. The request must detail the reason(s) an extension is necessary and state when completion of the permit requirements is expected. The Division of Architecture (DoA) of the commission will review the extension request to determine whether an extension is warranted. Permit extensions will be issued by letter and may extend the permit completion due date once

for no less six months and no more than ten years as deemed appropriate. Permit extensions requested for preparation of the completion report, following substantial completion of the permitted work, will be issued for no greater than nine months, unless authorized by the Antiquities Advisory Board. If an additional extension is subsequently requested, the DoA may issue the extension or request that the Antiquities Advisory Board review the request and make a recommendation to the commission regarding further extension. The commission may, by a majority vote of its members, approve or disapprove an additional extension of the final due date of an Antiquities Permit, provided that the following conditions are met:

(A) the permittee, project architect, and/or the professional firm listed on the permit must provide written documentation to the Antiquities Advisory Board and give an oral presentation justifying why an additional permit due-date extension is warranted; and

(B) justification for the additional extension must show that the extension is needed due to circumstances beyond the control of the permittee, project architect, or professional firm. Examples include, but are not limited to: funding problems or death of the project architect.

(f) Expiration responsibilities. Professional firms must ensure that a project architect is assigned to a permit at all times, until all obligations under the permit have been fulfilled, regardless of whether the permit is active or has expired. Expired permits are considered to be in default and will be reported to the Antiquities Advisory Board. Commission staff or the board may request that the permittee, project architect, and/or professional firm appear and give an oral presentation regarding the need for an extension pursuant to subsection (e)(2) of this section, or the board may pursue other remedies as allowed under §26.24 of this title (relating to Compliance with Rules for Historic Buildings and Structures Permits).

(g) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the commission's executive director, the director of the DoA, or their designated representative. This includes changes in the permitted project plans and specifications that could affect the integrity of the structure, building, or site.

(h) Permit hold or cancellation. The commission may place on hold or cancel a Historic Buildings and Structures Permit pursuant to §26.24 of this title under the following circumstances:

(1) the death of the project architect;

(2) failure of the permit applicant to fully fund the permitted project work;

(3) project work undertaken does not comply with the terms, conditions and approved project documents under the permit; and/or

(4) violation of §26.24 of this title.

(i) Institutions of higher education. If an institution of higher education notifies the commission that it protests the terms of a permit granted to an institution of higher education under this section, the matter becomes a contested case under the provisions of the Administrative Procedure Act, Texas Government Code §2001.051, et seq. The institution of higher education must notify the commission of its protest within 30 days of its receipt of notice of the terms of the permit to initiate a contested case. The hearing officer and the commission will follow the procedures and take into account the criteria listed in Texas Natural Resources Code, §191.021(c). Weighing these criteria against the criteria specified in §26.20(b) of this title (relating to Standards for the Treatment of Historic Properties), the commission shall include a requirement in a permit only if the record before the committee estab-

lishes by clear and convincing evidence that such inclusion would be in the public interest.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301701

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Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

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SUBCHAPTER E. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

13 TAC §§26.25 - 26.27

The new sections are adopted under §442.005(b), (h), (q), and (r); and §442.007(e) of the Texas Government Code and §191.052 of the Texas Natural Resources Code, which provide the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by this adoption.

§26.25. Memorandum of Understanding with Texas Department of Transportation.

(a) Purpose and Authority. This section contains the memorandum of understanding (MOU) entered into by the Texas Historical Commission (THC) and the Texas Department of Transportation (TxDOT) in accordance with Texas Government Code, §442.005 and §442.007; Texas Natural Resources Code, §191.0525(f); and Transportation Code, §201.607. The purpose of this MOU is to provide a formal mechanism for expediting THC review of TxDOT's transportation projects that potentially pose adverse effects on cultural resources. This MOU supersedes the previous MOU made effective on June 8, 2004.

(b) Applicability.

(1) Except as provided in paragraph (2) of this subsection, this section generally applies to:

(A) a transportation project for which an environmental review is being or will be performed under 43 TAC Chapter 2 (relating to Environmental Review of Transportation Projects); or

(B) any other type of project coordinated at TxDOT's request.

(2) Federally funded, licensed or permitted projects may follow the procedures of this section only if doing so would not conflict with environmental rules promulgated by the lead federal agency.

(c) Programmatic Agreements.

(1) Provisions of this MOU may be implemented, in part, through a Programmatic Agreement (PA) among the Federal Highway Administration (FHWA), the Texas State Historic Preservation Officer (TSHPO), the Advisory Council on Historic Preservation (Council), and TxDOT.

(2) With respect to federally funded projects, instead of the procedures set forth in this MOU, THC and TxDOT shall use the applicable procedures outlined in their First Amended Programmatic Agreement Among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings (PA-TU) and its successors to provide for innovation and efficiency in the timely development of TxDOT's transportation projects considerate of their impacts on cultural resources.

(3) TxDOT and THC will seek to revise the existing PA, amended in 2005, to reflect the streamlined procedures contained in this MOU.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Antiquities permit--A permit issued by THC in order to regulate the taking, alteration, damage, exhumation, destruction, salvage, archeological survey, testing, excavation and study of State Antiquities Landmarks including prehistoric and historic archeological sites, and the preservation, protection, stabilization, conservation, rehabilitation, restoration, reconstruction, or demolition of historic structures and buildings designated as a State Antiquities Landmark (or listed in the National Register of Historic Places (NRHP)).

(2) Area of potential effects (APE)--The geographic space or spaces within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(A) The area of potential effects for archeological properties will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations designated by TxDOT, and project-specific locations designated by TxDOT. The area of potential effects also extends to the depth of impacts caused by the undertaking.

(B) The area of potential effects for non-archeological historic properties for all non-federal undertakings will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations, and project-specific locations specifically designated by TxDOT.

(3) Cultural resources--A general term referring to buildings, structures, shipwrecks, objects, sites, and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(4) Effect--Alteration to the characteristics of a historic property qualifying it for formal designation as a State Antiquities Landmark.

(5) Eligibility--A property's eligibility for designation as a State Antiquities Landmark, as set forth in this chapter.

(6) Emergency Permit--A permit that may be used by TxDOT under certain emergency circumstances for the purposes of performing investigations prior to formal application for an antiquities permit.

(7) Historic property--Any prehistoric or historic district, site, building, structure, or object that meets the requirements for designation as a State Antiquities Landmark as set forth in this chapter.

(8) Minor widening--Roadway projects resulting in pavement profile widened to less than double their original width, resulting from adding travel/center-turn lanes or paved shoulders.

(9) Project-specific location--The location of specific material sources (e.g., base material, borrow and sand pits) and other sites used by a construction contractor for a specific project.

(10) State Antiquities Landmark (SAL)--Both Archeological and Non-archeological historic properties that are designated or eligible for designation as landmarks as defined in Subchapter D of the Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191) and identified in accordance with this chapter.

(11) THC--Texas Historical Commission.

(12) Transportation enhancement--An activity that is listed under 23 United States Code §101(a)(35), relates to a transportation project, and is eligible for federal funding under 23 United States Code §133.

(13) Transportation project--A project to construct, maintain or improve a highway, rest area, toll facility, aviation facility, public transportation facility, rail facility, ferry, or ferry landing. A transportation enhancement is also a transportation project.

(14) TxDOT--Texas Department of Transportation.

(e) Coordination Responsibilities.

(1) Texas Department of Transportation. The coordination responsibilities of TxDOT under this MOU are defined as follows.

(A) Except as provided in subsections (g) and (t) of this section, or other provisions of this chapter that exclude projects from coordination requirements, TxDOT shall coordinate review of transportation projects for which TxDOT is the project sponsor under 43 TAC §2.7 (relating to Project Sponsor) with THC for both archeological resources and cemeteries, and non-archeological historic properties, as described in this MOU.

(B) All coordination required by this MOU shall be conducted by or through TxDOT's Environmental Affairs Division or its successor as established by TxDOT administration, unless the Division (or its successor) and THC agree in writing to allow other appropriate organizational units of TxDOT or other entities approved by the respective agencies to conduct the coordination.

(C) Work in TxDOT right-of-way that is not associated with a project for which TxDOT is the project sponsor under 43 TAC §2.7 is the responsibility of the project sponsor and not of TxDOT (see Texas Natural Resources Code §191.0525), except as provided under subparagraph (E) of this paragraph. The project sponsor is responsible for coordinating directly with THC for such work, using the terms of this MOU to the extent THC determines appropriate. Examples of projects that will be coordinated by the non-TxDOT project sponsor directly with THC include but are not limited to:

(i) on-system highway projects funded entirely with local funds;

(ii) utility relocations or installations within TxDOT right-of-way sponsored by other entities; and

(iii) driveway and access connections sponsored by other entities.

(D) TxDOT shall not be a signatory to any permit issued by THC to another entity for work on a project funded or sponsored by such other entity.

(E) In accordance with subsection (h) of this section, TxDOT may coordinate projects sponsored or funded by another entity under this MOU by agreement with the non-TxDOT project sponsor, and TxDOT will provide notice to THC when it coordinates such projects.

(2) THC. The coordination responsibilities of THC under this MOU are to conduct any review required by this section in an efficient manner, to provide timely feedback to TxDOT about projects coordinated under this section, and to apply any funding provided by TxDOT solely to the review of TxDOT's projects in a manner that most efficiently streamlines THC's effective review and early coordination.

(f) Qualifications of Staff and Use of Consultants.

(1) All cultural resource investigations executed under the terms of this MOU shall be implemented by staff who meet the requirements for Professional Personnel set forth in this chapter; or the Secretary of the Interior's Professional Qualification Standards (36 C.F.R. Part 61, Appendix A).

(2) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards cited in paragraph (1) of this subsection.

(3) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC by or through TxDOT's Environmental Affairs Division, or its successor as established by TxDOT administration, unless it and THC agree in writing to allow other appropriate organizational units of TxDOT or other entities approved by the respective agencies to coordinate the work.

(g) Projects Excluded from Review for Archeological Resources and Cemeteries.

(1) Routine roadway maintenance projects and projects with minor levels of ground disturbance, by their nature and definition, do not have the potential to affect historic properties, and do not require review of their potential project impacts on archeological resources or cemeteries by THC under this chapter or under this MOU. Such projects include vegetation control, traffic control, routine painting and striping, and other activities with less than 100 cubic yards of ground disturbance below the original grade. The following activities also do not require review of their potential impacts on archeological resources or cemeteries under this chapter or under this MOU:

(A) installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;

(B) projects involving purchase or acquisition of land without associated ground-disturbing activities;

(C) routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas, and rest areas;

(D) in-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;

(E) crack seal, overlay, milling, grooving, resurfacing, and restriping;

(F) replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;

(G) intersection improvements, including repair or replacement of overpasses, that require less than 0.5 acres of additional right of way at each intersection;

(H) placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;

(I) all maintenance work between a highway and an adjacent frontage road;

(J) installation of noise barriers or alterations to existing publicly owned buildings less than 50 years old, to provide for noise reduction except in potential or listed National Register districts;

(K) driveway and street connections;

(L) all work within interchanges and within medians of divided highways;

(M) all work between the flowlines of the ditches and channels and above the original line and grade;

(N) ditch and channel maintenance, provided removal of fill is above the original line and grade;

(O) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce;

(P) the installation and modification of sidewalks (including the addition of American with Disabilities Act (ADA) ramps) except:

(i) sidewalk installations where the depth of impact exceeds one foot;

(ii) sidewalk and ADA ramp projects within the historic districts in the following cities or towns: Goliad, Rio Grande City, Roma, San Antonio, San Elizario, and San Ygnacio; and

(iii) sidewalk or ADA ramp projects within the limits of the following cities or towns: Anahuac, Nacogdoches, San Patricio, and Socorro;

(Q) design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this section; or

(R) other kinds of undertakings jointly agreed to in writing by THC and TxDOT.

(2) Projects that are exempt from project-specific review for compliance with this chapter and review under this MOU, as specified in paragraph (1) of this subsection, are also exempt from compliance with other THC rules regarding project-specific investigations or coordination for potential impacts to cemeteries promulgated under Texas Health and Safety Code, §711.012(c), unless one of the following two conditions is present:

(A) pavement would be extended to within 15 feet of the boundary of a known cemetery founded earlier than 1955; or

(B) another project element would directly affect known burials.

(h) Procedures for Project Coordination when the Project Requires Review for Archeological Resources and Cemeteries.

(1) For projects subject to review for archeological resources and cemeteries under this MOU, TxDOT will evaluate the APE for potential project effects to archeological historic properties and to determine whether the APE contains cemeteries. TxDOT must make reasonable efforts and act in good faith when complying with this requirement.

(2) TxDOT may approve projects to proceed to construction without review by THC when TxDOT staff finds that the project will not affect archeological historic properties and the project APE will not contain cemeteries.

(3) TxDOT will submit a quarterly report of projects evaluated and approved internally to THC.

(4) TxDOT will submit projects to THC for review when TxDOT staff finds the project may affect archeological historic properties or the project APE contains cemeteries. TxDOT may, at its discretion, submit projects for THC review in cases where TxDOT staff finds that the project will not affect archeological historic properties, and the project APE does not contain cemeteries.

(5) In its request for review, TxDOT will make one or more of the following findings, determinations, and recommendations:

(A) In cases where no archeological sites or cemeteries occur or are likely to occur in some or all of the APE, TxDOT will propose a finding of no effect in those portions of the APE and recommend that the project proceed to construction in those portions.

(B) In cases where an archeological site occurs within the APE but the portion of the site within the APE does not have characteristics that qualify it as an archeological historic property or is not likely to have such characteristics, TxDOT will propose a determination that the portion of the site in the APE is not an archeological historic property, find that the project will have no effect on archeological historic properties at the site location, and recommend that the project proceed to construction at the location of the site.

(C) In cases where the portion of a site within the APE has characteristics that qualify it as an archeological historic property, TxDOT will propose a determination that an archeological historic property occurs within the APE.

(D) In cases where the APE contains an archeological historic property or cemetery, TxDOT will either propose a finding that the project will have no adverse effect on the site or propose a finding that the project will have an adverse effect on the site.

(E) If a project will have an adverse effect on an archeological historic property or cemetery within the APE, TxDOT will also recommend to THC an appropriate means by which to resolve the potential adverse effect.

(i) The resolution of adverse effects may take one of the following forms:

(I) the avoidance of the site during construction;

(II) an alternative mitigation strategy, such as the preservation of a comparable site or the re-analysis of an existing collection;

(III) data recovery excavation or exhumation; or

(IV) another form of resolution approved by THC.

(ii) In cases where data recovery is the selected means for resolving adverse effects, TxDOT will coordinate with THC at several stages during the data recovery process according to the following procedures, unless TxDOT and THC agree in writing to different procedures:

(I) TxDOT will submit an initial data recovery plan as part of a permit application for data recovery to THC for review.

(II) TxDOT will submit a brief report, documenting whether the fieldwork met the terms of the initial data recovery plan and justifying any deviation, to THC for review. When appropriate, TxDOT will recommend that the project be approved to proceed to construction and destruction of any remaining portion of the site within the APE.

(III) TxDOT will submit a revised data recovery plan, based on a preliminary review of field data and recovered materials, to THC for review. When appropriate, TxDOT will recommend that the revised plan be adopted for the completion of data recovery analysis and reporting.

(IV) TxDOT will submit a draft data recovery report to THC for review. When appropriate, TxDOT will recommend that the report be accepted in partial satisfaction of the terms of the permit and in satisfaction of TxDOT's obligations for resolving the adverse effects of the project on the site.

(V) TxDOT will ensure that data recovery investigations do not begin before the State of Texas' legal right to ownership of the artifacts to be recovered has been secured.

(F) THC will respond within 20 calendar days of receipt of the TxDOT request for review. The response will include:

- (i) a statement of concurrence or nonconcurrence with TxDOT's findings and recommendations;
- (ii) a determination of site eligibility for all evaluated sites; and
- (iii) any other comments relevant to the archeological resources or cemeteries which could be affected by the project.

(6) If THC does not respond within 20 calendar days, TxDOT may assume that THC concurs with TxDOT's findings, determinations, and recommendations and may proceed with the project in accordance with the procedures required in this MOU.

(i) Background Studies for Archeological Resources and Cemeteries.

(1) For projects subject to review for archeological resources and cemeteries under this MOU, based on the results of background research, TxDOT will identify projects or portions of projects' APEs that require archeological field investigation.

(2) Eligibility determinations that TxDOT performs under this MOU will not require field investigations if sufficient background information exists to demonstrate that the portion of the site to be affected does not have potential research value.

(3) Determinations that TxDOT makes under this MOU regarding the presence of cemeteries in project APEs may be made through the use of maps, project-area photographs, or other background research.

(j) Permits for Archeological Resources and Cemeteries. THC shall issue antiquities permits for reconnaissance survey, intensive survey, monitoring, eligibility testing, exhumations, and emergencies to archeological staff at TxDOT under the following terms:

(1) The archeological staff of TxDOT's Environmental Affairs Division, or its successor as established by TxDOT administration, oversees the work.

(2) The work shall be completed in accordance with the provisions of the MOU.

(3) THC shall not require TxDOT to submit an antiquities permit application.

(4) In lieu of a permit application, TxDOT archeological staff shall notify THC in writing (by email or letter) of:

- (A) the principal investigator;
- (B) the investigation type and scope of work;
- (C) the county in which the project will occur;

(D) the project name or identifier (site trinomial, if applicable); and

(E) the period of time for which the permit is desired.

(5) TxDOT staff may initiate work following notification of THC.

(6) THC shall issue a permit number within five business days of receiving the notification.

(7) TxDOT may revise the type of investigation based on observations made during the conduct of work as long as TxDOT provides to THC notification of the change prior to submission of the report.

(8) When conditions of natural disasters, man-made disasters, or post-review discovery necessitate immediate action, TxDOT may initiate work under an emergency permit without having first requested and received the permit number subject to the following conditions:

(A) TxDOT staff shall only conduct work under an emergency permit when archeological deposits are discovered during development or other construction projects or under conditions of natural or man-made disasters that necessitate immediate action to deal with the situation and findings.

(B) TxDOT will provide notification to THC to obtain the permit number within five working days of initiating the work.

(C) All categories of investigations can be authorized under an emergency permit, but an emergency permit will only be issued under emergency conditions where the investigations must be initiated or performed prior to notification under paragraph (4) of this subsection.

(9) THC shall consider the work conducted under the permit completed upon receipt of:

(A) one unbound report;

(B) two tagged pdf format reports on an archival quality CD or DVD, one containing all maps and locational information and one with maps and locational information redacted;

(C) a shape file of the project area subject to investigation; and

(D) a completed abstract form.

(10) The number of defaulted permits accrued by particular TxDOT staff while working for TxDOT shall not affect the issuance of additional permits to other TxDOT staff by THC for TxDOT projects.

(11) The inspection of a project APE or proposed APE for purposes of evaluating the kind of archeological investigation that may be required (scoping) shall not constitute an activity that requires a permit from THC when that activity does not result in a report to be coordinated under the terms of the MOU.

(12) All types of archeological investigations conducted by TxDOT but not covered by this section shall require submission of an antiquities permit application and adhere to the terms of the permit and this chapter.

(k) Surveys for Archeological Resources and Cemeteries.

(1) Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these activities are sufficient to determine that any sites present are unlikely to be eligible.

(2) Eligibility determinations that TxDOT performs under this MOU do not require subsurface investigation if it can be demon-

strated that the portion of the site to be affected is not likely to have sufficient integrity to be eligible.

(3) For portions of the APE where deposits may retain sufficient integrity for sites to be eligible, TxDOT survey methods will conform with THC's Archeological Survey Standards or with other appropriate methods, except as provided in subparagraphs (A) and (B) of this paragraph:

(A) TxDOT reserves the right to depart from published survey standards in cases where it deems appropriate.

(B) THC reserves the right to review non-standard procedures for their adequacy.

(4) Survey methods will be considered adequate for the identification of burials and cemetery boundaries when the portions of the APE within 25 feet of a known cemetery have been investigated and the survey included scraping to a depth adequate to determine whether grave shafts or burials occur in the APE.

(5) A survey to identify burials does not comprise an activity with the potential to cause an adverse effect to a historic property.

(l) Archeological Eligibility Testing Phase.

(1) The following methods will be employed for test excavations:

(A) Mechanical trenches will be excavated and profiles documented in order to characterize the area's potential for archeological deposits with sufficient integrity to be eligible to occur at the site.

(B) The extent of the site within the APE will be sampled through some combination of shovel-testing, column sampling, augering, surface collection, and geophysical prospection in order to characterize the distribution of archeological materials across the site.

(C) Additional units will be excavated and screened to evaluate site areas that appear to have the best potential for yielding important data with good integrity, based on the results of previous work.

(D) The materials analyzed will comprise those materials most likely to contribute important information about prehistory or history.

(E) TxDOT reserves the right to depart from these methods in cases where it deems appropriate and shall justify deviations in the report.

(2) Data from test excavation projects shall be made available to qualified researchers.

(m) Archeological Excavation and Data Recovery.

(1) When appropriate and established in the final research design approved by THC, TxDOT will develop public educational outreach projects for significant data recovery investigations.

(2) Data from data recovery projects shall be made available to qualified researchers.

(n) Exhumation.

(1) Exhumation is a form of investigation to resolve the adverse effects of a project on a cemetery.

(2) Exhumation efforts may be staged as a separate phase of work from burial identification. Following procedures set forth in Texas Health and Safety Code, Chapter 711, exhumation may begin once any required notifications of next of kin or other procedures required by Texas Health and Safety Code, Chapter 711 have been conducted.

(3) The following tasks represent a sufficient, reasonable and good faith effort to identify remains and any next of kin associated with burials in unknown or abandoned cemeteries:

(A) making inquiries through the local County Historical Commission;

(B) posting notices with local news outlets; and

(C) posting notices with local churches.

(4) An exhumation project is itself not a type of investigation that requires an outreach effort or curation of materials at a state-certified facility.

(o) Archeological Sites found after Award of Contract.

(1) When previously unknown archeological remains are encountered after award of a construction contract, TxDOT will immediately suspend construction or any other activities that would affect the site.

(2) TxDOT will inform THC of the discovery of previously unknown archeological remains and invite THC to accompany TxDOT staff (or consultants) to the location within ten business days of the discovery.

(3) TxDOT, in consultation with THC, will evaluate the need, if any, for further investigations.

(4) If TxDOT determines that the discovery is an unrecorded archeological site, then TxDOT or its consultants shall complete an electronic TexSite archeological site survey form.

(5) If TxDOT determines that the site does not warrant further investigations because it is not a historic property, construction will resume. TxDOT will document its findings.

(6) If TxDOT determines that the site warrants further investigation because the site may be a historic property, TxDOT will take one of the following three actions, as appropriate:

(A) a permit amendment will be sent to THC for the additional work, if an existing permit for the project is still open;

(B) a notification for a new permit will be sent to THC; or

(C) TxDOT will perform necessary investigations under an emergency permit.

(7) Upon completion of the investigation in accordance with any applicable permit terms, construction may proceed as planned.

(p) Standard Treatments for Particular Resource Types.

(1) Isolated wells or cisterns unassociated with other remains will be treated as follows:

(A) Isolated wells or cisterns that post-date 1900 A.D. do not warrant notification of THC or additional investigation. Removal or sealing of these features does not constitute an adverse effect.

(B) Isolated wells or cisterns that pre-date 1900 A.D. require documentation of their location, construction, and condition. Upon completion of the documentation, these features may be back-filled and capped. These activities do not constitute an adverse effect.

(2) Burnt rock midden features that have not been obviously destroyed by modern disturbances will be treated as follows:

(A) the feature will be trenched to expose a cross-section;

(B) the exposed profiles will be documented, focusing on the identification of any internal structure;

(C) column samples will be taken from the exposed profile in order to collect samples for flotation and dating from each deposit recognized in the profile;

(D) deviations from this standard approach may be undertaken if TxDOT coordinates an alternate approach with THC; and

(E) any additional work on the feature will be determined in consultation between TxDOT and THC, based on the results of the trenching.

(q) Artifact Recovery and Curation.

(1) Artifact recovery.

(A) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation unless the artifacts or samples are approved by THC for discard under this chapter and Chapter 29 of this title (relating to Management and Care of Artifacts and Collections).

(B) To ensure proper care and curation, recovery methods must conform to the applicable requirements of this chapter and Chapter 29 of this title.

(2) Artifact curation.

(A) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, artifacts and accompanying documentation must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(B) Artifacts and samples will be placed at an appropriate artifact curatorial repository which fulfills the applicable requirements of Chapter 29 of this title, as approved by THC. When appropriate, TxDOT will consult with THC to identify for disposal collections or portions of collections that do not have identifiable value for future research or public interpretation. Final approval regarding the disposition of collections will be made by THC.

(C) TxDOT is responsible for the curatorial preparation of all artifacts to be submitted for curation so that they are acceptable to the receiving curatorial repository and fulfill the applicable requirements of this chapter and Chapter 29 of this title, as approved by THC.

(r) Documentation for Archeological Resources and Cemeteries.

(1) Projects subject to review for archeological resources and cemeteries under this MOU will be documented by TxDOT in the manner described in this section. Documentation for each such project will include, at a minimum:

(A) a description of the project, defining the APE or the investigated portion of the APE in three dimensions;

(B) a project location map, plotting the project location on 7.5' Series USGS quadrangle maps;

(C) information regarding the setting that is relevant for the assessment of the integrity of any archeological sites within the APE;

(D) information on previously recorded archeological sites in the project location;

(E) description and justification of the level of effort undertaken for the investigation; and

(F) results and recommendations.

(2) All TxDOT survey and testing reports will also include:

(A) description and justification of field methods, including the sampling strategy;

(B) description and quantification of any archeological materials identified;

(C) accurate plotting of any sites found on 7.5' Series USGS quadrangle maps;

(D) submission of electronic TexSite archeological site survey forms to the Texas Archeological Research Laboratory; and

(E) recommendations regarding whether any site merits further investigation.

(s) Quarterly Reports for Archeological Resources and Cemeteries. Quarterly reports will be submitted by TxDOT to THC within 60 business days after the end of the calendar quarter, listing all projects for which TxDOT has documented that no historic properties or cemeteries are present in the project's area of potential effect, and those projects that will have no adverse effects on archeological historic properties or cemeteries.

(t) Projects Excluded from Review for Non-Archeological Historic Properties.

(1) For the purposes of this subsection, the term historic properties will refer only to non-archeological historic properties.

(2) Based on previous coordination outcomes, TxDOT and THC agree that the following types of routine roadway projects listed in subparagraphs (A) - (I) of this paragraph pose limited potential to affect historic properties:

(A) maintenance, repair, installation, or replacement, of transportation-related features, including fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment, bridges, railroad crossings, picnic areas, rest areas, roadside parks, lighting, curbs and gutters, safety barriers, ditches, storm drains, culverts, overpasses, channels, rip rap, and noise barriers;

(B) maintenance, repair, or replacement of roadway surfacing, including crack seal, overlay, milling, grooving, resurfacing, and restriping;

(C) maintenance, repair, reconfiguration, or correction of roadway geometrics, including intersection improvements and driveway and street connections;

(D) maintenance, repair, installation or modification of pedestrian and cycling-related features, including American with Disabilities Act ramps, trails, sidewalks, and bicycle and pedestrian lanes;

(E) maintenance, repair, relocation, addition, or minor widening of roadway, highway, or freeway features, including turn bays, center turn lanes, shoulders, U-turn bays, right turn lanes, travel lanes, interchanges, medians, and ramps;

(F) maintenance, repair, replacement, or relocation of features at crossings of irrigation canals, including bridges, new vehicle crossings, bank reshaping, pipeline and standpipe components, canal conversion to below-grade siphons, and utilities;

(G) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, re-

sulting in an imminent threat to life or property of the traveling public, or which substantially disrupts or may disrupt the orderly flow of traffic and commerce;

(H) design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this paragraph; and

(I) other kinds of undertakings jointly agreed to in writing by THC and TxDOT as not requiring review.

(3) For projects described in paragraph (2)(A) - (I) of this subsection, TxDOT qualified professional staff shall determine whether additional evaluation is required due to direct effects to historic properties. If no such evaluation is deemed necessary, such projects are determined to pose no effect on historic properties and do not require review by THC under this chapter or under this MOU.

(4) For review-exempt projects, documentation shall be limited to that maintained in TxDOT's official project files. THC may audit TxDOT files for specific projects upon request.

(u) Procedures for Project Coordination when the Project Requires Review for Non-Archeological Historic Properties.

(1) Historic properties. For the purposes of this subsection, the term historic properties will refer only to non-archeological historic properties.

(2) Internal Review Projects. For projects subject to review for historic properties under this MOU, TxDOT qualified professional staff shall determine the presence or absence of historic properties in the area of potential effects. Such efforts should focus on the types of historic properties within public rights-of-way and other sensitive areas, including but not limited to historic bridges, historic road corridors, historic roadside parks and rest areas, historic Depression Era masonry culverts, historic districts, historic courthouse squares and other historic commercial zones. Project activities that TxDOT determines will have no effect or no adverse effect on historic properties may be internally reviewed by TxDOT and are approved for construction. Documentation for such projects will be maintained in official TxDOT project files and regularly reported to THC in accordance with paragraph (4)(A) of this subsection.

(3) Coordinated Projects. Projects subject to review for historic properties under this MOU that are determined by TxDOT qualified professional staff to pose an adverse effect on historic properties shall require individual THC review according to the following procedures:

(A) THC will respond within 20 calendar days of receipt of TxDOT's request for review by indicating whether an affected historic property will require a historic structures permit for an SAL, or whether THC intends to initiate an SAL nomination for the affected property. If THC does not respond within 20 calendar days, TxDOT may assume THC's concurrence with its determinations, and TxDOT may proceed with the project to construction;

(B) in accordance with Texas Government Code §442.008 and §17.2 of this title (relating to Review of Work on County Courthouses), TxDOT will notify THC of any work affecting a county courthouse or its surrounding site, up to and including the curb. THC will respond within 20 calendar days of receipt of TxDOT's notification by indicating whether a historic structures permit for an SAL or additional consultation pursuant to a preservation covenant or easement will be required; and

(C) state-funded projects coordinated under this MOU that may subsequently require a federal permit or change to federal

funding, and that involve a direct taking of a historic property, must be individually coordinated with THC in order to satisfy federal regulations under 23 C.F.R. Part 774 and 36 C.F.R. Part 800. Procedures outlined in the 2005 PA-TU or subsequent agreements will govern such coordination.

(4) Documentation. For projects that are internally reviewed or individually coordinated under paragraphs (2) and (3) of this subsection, TxDOT will comply with the following project documentation requirements:

(A) for projects that are internally reviewed under paragraph (2) of this subsection, TxDOT will submit to THC a quarterly report of internally approved projects within 60 business days after the end of the calendar quarter. THC may audit TxDOT files for specific projects submitted in the quarterly report. Quarterly report documentation will include:

- (i) project description and scope;
- (ii) project location map with delineation of the APE and location of historic properties;
- (iii) methodology used to identify historic properties;
- (iv) photographic and descriptive information for each identified property;
- (v) description of public involvement activities;
- (vi) justification for findings of historic properties, including setting, integrity, and contextual information; and
- (vii) justification of effects on historic properties, including evaluations, reports, and other information relevant to the findings by TxDOT; and

(B) for projects that are individually coordinated under paragraph (3) of this subsection, documentation submitted to THC will include the items listed in subparagraph (A)(i) - (viii) of this paragraph, and a description of efforts to avoid or minimize harm, mitigation, and commitments.

(v) Denial of Access. In cases where access to private land for conducting investigations is denied prior to the approval of the environmental review document, TxDOT will make a commitment to complete appropriate investigations once access is obtained, but prior to any construction related impacts.

(w) MOU to Govern TxDOT Procedures. TxDOT satisfies applicable THC requirements if it utilizes the procedures of this MOU in lieu of other THC procedures. In cases where TxDOT is utilizing this MOU in lieu of other THC procedures, TxDOT must follow the requirements of this MOU.

(x) Project-Specific Agreements. Any project-specific agreements reached between TxDOT and THC regarding the evaluation or treatment of project effects shall be honored by both parties and shall supersede the requirements of this MOU. TxDOT and THC may deviate from the terms of the agreement only when both parties concur that the agreement requires revision.

(y) Continuous Improvement Agreement. TxDOT and THC agree to collaborate on improvements to their programs and development of innovative solutions for expedited review procedures. Such mechanisms may include using project outcomes to refine approaches to resource identification, evaluation, treatment methods, programmatic mitigation measures and interagency agreements that facilitate early coordination, and streamlining and expedited review of TxDOT's transportation projects.

(z) THC Review of TxDOT Project Files. THC may review TxDOT project files for specific undertakings carried out under this MOU. THC may recommend process improvements based on issues identified during the review.

(aa) Dispute Resolution. THC and TxDOT staff will be responsible for attempting to resolve any conflict between THC and TxDOT that results from the implementation of this section before elevating to agency management.

(bb) Review of MOU. This MOU shall be reviewed and updated as provided by law or by agreement between the parties. THC and TxDOT agree to convene every four years to review, update, or extend this agreement.

§26.26. Memorandum of Understanding with Texas Water Development Board.

(a) Introduction.

(1) Whereas, the Texas Water Development Board (TWDB) and the Texas Historical Commission (THC) desire to enter into a memorandum of understanding (MOU) to help define how the TWDB will ensure projects funded by the TWDB receive appropriate consideration of potential impacts to all types of archeological sites, historic structures, historic buildings, and cemeteries under the Antiquities Code of Texas (Texas Natural Resources Code Chapter 191); and

(2) Whereas, under the provisions of Texas Water Code §6.104, TWDB may enter into a MOU with any other state agency and shall adopt by rule any MOU between TWDB and any other state agency; and

(3) Whereas, under the provisions of Texas Government Code Chapter 442, the THC is charged with the responsibility for the protection and preservation of the archeological and historical resources of Texas; and

(4) Whereas, under the provisions of the Texas Health and Safety Code Chapter 711, the THC has a number of specified roles, including the removal of burials from unknown or abandoned cemeteries; and

(5) Whereas, under the provisions of Texas Natural Resources Code §§191.051, 191.053, and 191.054, THC may contract with or issue permits to other state agencies for the discovery and scientific investigation of archeological deposits;

(6) Now, therefore, the TWDB and the THC agree to enter into this MOU regarding appropriate review of potential impacts to all types of archeological sites, historic structures, historic buildings, and cemeteries for all projects to be constructed with financial assistance from the TWDB.

(b) Pre-construction Phase Responsibilities. In compliance with this chapter, TWDB will ensure that applicants for financial assistance provide the TWDB with documentation of appropriate coordination with the THC during the project planning phase for review of potential impacts to cultural resources on lands belonging to or controlled by any county, city, or other political subdivision of the State of Texas that may be impacted by proposed development projects funded in whole or in part by TWDB.

(1) Certain categories of projects funded by the TWDB, as defined under 31 TAC Chapter 371, Subchapter E; 31 TAC Chapter 375, Subchapter E; and 31 TAC §363.14, may be excluded from the formal environmental review requirements when the proposed project scope or construction methods will not have any adverse impacts to the human environment, including cultural resources, such as rehabilitation or direct functional replacement of existing pipelines, pump sta-

tion equipment, storage tanks, or treatment facility equipment. Such categories may include:

(A) State Funded Programs: a Determination of No Effect; or

(B) Federal Equivalency Programs: a Categorical Exclusion.

(C) TWDB will send THC the documents in this subsection as notification that the project has been excluded from formal environmental review and may not require THC review. The THC will not need to respond to Categorical Exclusions or Determinations of No Effect.

(2) For projects not eligible to receive a Categorical Exclusion or a Determination of No Effect, or for projects that may be excluded from formal environmental review once concerns about potential impacts have been adequately addressed, a TWDB applicant, or its consultants, may coordinate with THC to seek recommendations regarding the need for field investigations or to seek concurrence with a determination that the project may proceed without further investigations.

(A) For projects requiring field investigations, the TWDB applicant, or its consultants, will proceed as directed by the THC in a manner consistent with the Antiquities Code of Texas and the Archeological Survey Standards for Texas.

(B) The TWDB will not approve reports required under a Texas Antiquities permit or make recommendations regarding scope of work to the THC.

(3) For projects requiring coordination with the THC, the TWDB will not release funds for the design or construction phases of a project until written approval that a project may proceed has been received from the THC.

(c) Construction Phase Responsibilities. The TWDB will condition all financial assistance, consistent with §26.7 of this title (relating to Location and Discovery of Cultural Resources and Landmarks), that if an archeological site is discovered during project construction:

(1) work will cease in the area of the discovery;

(2) the site will be protected; and

(3) the discovery will be reported immediately to the THC.

(4) As necessary, the TWDB will condition financial assistance to include THC recommendations for measures intended to ensure avoidance, minimization, or mitigation of potential impacts to cultural resources, such as construction monitoring by a qualified archaeologist.

(d) Term. This MOU will remain in full force and effect for the period of four years or until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between the TWDB and the THC.

(e) Review. This MOU shall be reviewed and updated as provided by law or by agreement between the parties. THC and TWDB agree to convene every four years to review, update, or extend this agreement.

§26.27. Memorandum of Understanding with Texas Parks and Wildlife Department.

(a) Introduction. It is the public policy and in the interest of the State of Texas to locate, protect, and preserve archeological sites and historic properties situated on public lands. Furthermore, it is in the public interest to enter into agreements to provide for timely and efficient construction of transportation facilities, reservoirs, public build-

ings, parks, and infrastructure. Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) are formal agreements which provide for the preservation of environment and cultural resources; wise, productive use of the cultural and natural resources; good stewardship of publicly owned landmarks; and protection of public and private investment in historic preservation.

(b) **Primary Considerations and Stipulations.** All agreements are subject to this chapter. Primary considerations in the development of permit specific memoranda shall include the significance of the cultural resource(s), and the nature of the impact of the project on the cultural resource(s). The memoranda will stipulate basic information related to the data recovery program for each permitted project, including, but not limited to: the significance of the area to be excavated; the methods and techniques to be employed; the coordination of the excavation with project construction schedules; and the estimated budget for all phases of work related to the investigation, including artifact analysis and report production. Memoranda of Understanding between the Texas Historical Commission (THC) and the Texas Parks and Wildlife Department (TPWD) follow.

(c) TPWD will comply with the provisions of this section. For the purpose of this section, "TPWD lands" means lands owned or under the control of TPWD.

(1) **General Provisions.**

(A) TPWD shall:

(i) require that all archeological investigations on TPWD lands are conducted under Antiquities Permits obtained by persons who meet THC requirements for principal investigator as listed in §26.4 of this title (relating to Professional Qualifications and Requirements);

(ii) notify the THC of pending construction and maintenance projects in accordance with all applicable provisions of this section;

(iii) perform and report on construction monitoring, archeological surface reconnaissance, and intensive cultural resource surveys on TPWD lands, in accordance with all applicable provisions of this section; and

(iv) notify THC when cultural resources are discovered on TPWD lands.

(B) THC will issue an annual Antiquities Permit for investigations on TPWD lands to the TPWD Cultural Resources Program Director by January 15th of each year that this MOU is in effect, upon a finding by THC of successful completion by TPWD of the annual Antiquities Permit issued two years before that date.

(C) This MOU may be revised and amended upon the agreement of TPWD and THC.

(2) **THC Archeological Review of Proposed Projects on TPWD Lands.**

(A) Projects reviewed by THC. Construction or maintenance projects on TPWD lands that impact the ground surface or subsurface shall be submitted for THC review prior to project inception, when the project:

(i) impacts a total or cumulative area of potential effect greater than five acres and involves construction or maintenance activities in areas where similar activities have not occurred before;

(ii) consists of disking, plowing, or other periodic activities impacting a total or cumulative area of potential effect greater

than 120 acres, even if similar activities have occurred in that area before;

(iii) is new or replacement fence construction that involves new fence line roads, fire lanes, bulldozing, or other ground-disturbing activities aside from post holes;

(iv) is grading or maintenance of a road or fire break when the road or fire break, water diversion features, and/or its ditches will be lengthened, widened, or deepened beyond previous disturbance from construction and/or maintenance;

(v) involves activities related to prescription burning of any kind that disturb the ground surface or subsurface in areas larger than 10 acres where similar activities have not occurred before; or

(vi) is any type of project not described in subparagraph (B) of this paragraph.

(B) Projects not reviewed by THC. Construction or maintenance projects on TPWD lands that result in no impact to the ground surface or subsurface will not be reviewed by THC prior to project inception. In addition, construction or maintenance projects on TPWD lands that result in impact to the ground surface or subsurface will not be reviewed by THC prior to project inception when the project:

(i) impacts a total or cumulative area of potential effect of five acres or less;

(ii) consists of disking, plowing, or other periodic activities impacting a total or cumulative area of potential effect of less than 120 acres where similar activities have occurred before;

(iii) is new or replacement fence construction that does not involve new fence line roads, fire lanes, bulldozing, or other ground disturbing activities aside from post holes;

(iv) is grading, disking, or other maintenance of a road or fire break when the road or fire break, related water diversion features, and/or its ditches will not be lengthened, widened, or deepened beyond previous disturbance from construction and/or maintenance; or

(v) is prescription burning or hand clearing of any kind that does not disturb the ground surface, historic structures, and/or rock art.

(C) Prior THC approval of ground-disturbing projects. Projects that involve continuing impacts of the same nature and extent approved by THC need not be reviewed again if no archeological sites have been recorded within those project areas. THC will review continuing impacts of the same nature and extent in areas where archeological sites are present at 10 year intervals from the original date of approval to proceed.

(D) TPWD review of projects. TPWD will review all projects that have the potential to impact cultural resources. Notwithstanding the provisions of this subparagraph, TPWD may elect to initiate archeological investigations when proposed projects have the potential to impact cultural resources, on the recommendation of the Cultural Resources Program Director.

(E) TPWD will provide cultural resources training to State Parks and Wildlife Management Area personnel. On the direction of the Cultural Resources Program Director (CRPD), Wildlife Facilities Coordinator (WFC), or their designees, TPWD personnel who have received cultural resources training within the past 5 years may observe construction and maintenance activities, to ensure that cultural resources are considered during TPWD activities. If any archeological

sites are revealed by such activities, TPWD personnel will report them to the CRPD, WFC, or their designees.

(3) Procedures for Proposed Projects.

(A) Notification to THC of proposed projects. TPWD shall send THC written notification no less than 30 days in advance of proposed projects that require review under paragraph (2)(A) of this subsection, and/or Section 106 of the National Historic Preservation Act (16 U.S.C. §470f). In rare cases when a response from THC is needed in less than 30 days, notification may be made by telephone or electronic mail, with a written notification to follow. Project review requests concerning Wildlife Management Areas shall be directed to THC through the WFC or their designee, and project review requests concerning State Parks and other TPWD properties shall be directed to THC through the CRPD or their designee. Each notification must include information on:

(i) the type of project that is proposed, including the nature and extent of its impacts;

(ii) any prior impacts that have affected the project area;

(iii) the project location plotted on a copy of a USGS 7.5' topographic quadrangle map, showing any known archeological sites in the vicinity; and

(iv) any known archeological sites and/or archeological investigations within the proposed project area.

(B) THC response to project review requests. THC shall respond in writing to each project review request within 30 days of its receipt. Archeological investigations may be deemed necessary by THC as a result of this review. If THC does not respond to TPWD within that period of time, TPWD may proceed with internal authorization of the proposed project without further notice to THC.

(C) THC approval of proposed projects. When THC concurs with a finding of a qualified TPWD archeologist or archeologist contracted by TPWD that no archeological sites are located in a proposed construction area or that a proposed project will not adversely impact cultural resources, TPWD may proceed with the project on receipt of written concurrence from THC.

(D) Archeological site evaluation. When a qualified TPWD archeologist or archeologist contracted by TPWD identifies an archeological site or sites in a proposed project area, he or she will evaluate whether each site appears to merit official State Antiquities Landmark designation under §26.10 of this title (relating to Criteria for Evaluating Archeological Sites).

(E) Protection of significant sites. If adverse impacts to an archeological site(s) can be avoided during construction, the archeologist will mark the site in the field and TPWD personnel will not damage that area. If TPWD conducts vegetation clearing on significant archeological sites, it shall be done by hand to avoid damage to the site. On-site decisions made by TPWD archeologists regarding protective measures for archeological sites will be respected by TPWD employees and contractors, and will balance the need to conserve significant sites with timely project completion.

(F) Mitigation of impacts to significant sites. If an archeological site that merits official State Antiquities Landmark designation would be adversely impacted by a proposed project, TPWD will propose mitigation measures and request THC consultation and recommendations. If TPWD or THC ascertains that further investigations are necessary prior to or during a construction or maintenance project, these investigations must be performed before the project may proceed.

(G) Archeological site discovery. Whenever cultural resources are discovered on TPWD lands, they will be reported to the CRPD, WFC, or their designees, who will report this information to THC and maintain central repositories of cultural resource information.

(4) THC Review and Coordination of Third Party Projects on TPWD Lands.

(A) TPWD will ensure that archeological investigations conducted on TPWD lands on behalf of other entities promote the identification and conservation of cultural resources.

(B) TPWD will require principal investigators conducting archeological investigations on TPWD lands on behalf of third parties to obtain individual Antiquities Permits for those investigations.

(C) THC will notify TPWD if they should become aware of proposed archeological investigations on lands that TPWD manages, but are owned by another entity, and/or that are sponsored by an entity other than TPWD.

(D) THC shall issue Antiquities Permits to entities conducting archeological investigations on TPWD lands on behalf of third parties, only after receiving written notice that TPWD has approved the research designs, scopes, methods, and reporting requirements for those permits, and the CRPD, WFC, or their designee has signed the Landowner's Certification on those permit applications.

(E) THC will notify TPWD prior to granting permit extensions.

(F) TPWD will require that background research for archeological projects on TPWD lands is conducted at the TPWD Archeology Laboratory in Austin prior to the field investigations, unless otherwise stipulated.

(G) TPWD will review all reports or sections of reports for archeological investigations on TPWD lands, regardless of whether those projects extend beyond TPWD boundaries. The CRPD, WFC, or their designee will provide written comments on draft reports within 30 days to the principal investigator, and principal investigators shall provide revised draft reports to TPWD in which TPWD comments are addressed. After TPWD concurs that those comments have been addressed, TPWD will submit reports to THC for review, under a cover letter from the CRPD, WFC, or their designee notifying THC that those draft reports have been reviewed and approved by TPWD.

(5) Scope of TPWD Annual Antiquities Permit Archeological Investigations.

(A) Archeological investigations. The annual permit authorizes construction monitoring, surface reconnaissance, excavation of shovel tests less than 1 by 1 meter in horizontal dimension, mechanical auger testing, rock art recording and conservation, and intensive cultural resource surveys of TPWD lands up to 200 acres per project conducted during that calendar year.

(i) Reconnaissance surveys as defined in §26.15 of this title (relating to Archeological Permit Categories) conducted under the annual permit may exceed 200 acres per project.

(ii) Up to five backhoe or other mechanical trench excavations may be used during survey-level investigations to determine whether buried cultural deposits exist, and to obtain geoarcheological (geomorphological) data.

(iii) The following investigations are not authorized under this permit. Intensive surveys covering over 200 acres and/or advanced archeological investigations such as testing or data recovery as defined in §26.15 of this title (relating to Archeological Permit

Categories) will not be conducted under this permit. Architectural investigations are not authorized under this permit.

(B) Qualifications. Investigations will be conducted under the supervision of qualified TPWD archeologists or, at the discretion of the CRPD, archeologists contracted by TPWD who meet THC requirements for principal investigator as listed in §26.4 of this title. The CRPD, WFC, or their designees may designate qualified TPWD archeologists to serve as Principal Investigators for particular projects.

(C) Standards. All archeological investigations performed on TPWD lands must meet archeological standards as described in §26.4 of this title.

(6) THC Review of Reports on Archeological Investigations under annual Antiquities Permit.

(A) Archeological investigations conducted on TPWD lands under the annual Antiquities Permit that require THC review under paragraph (2)(A) of this subsection or other state or federal regulations will be reported in the annual Antiquities Permit report. At the discretion of the CRPD, additional investigations that do not require THC review may be included in the annual Antiquities Permit report, and will be clearly designated as such.

(B) Interim reports. When TPWD seeks project approval from THC as a result of archeological investigations conducted on TPWD lands under the annual Antiquities Permit, the CRPD, WFC, or their designees may send THC a concise interim report on the findings of the investigations. The interim report will contain information on:

(i) the type of project that is proposed, including the nature and extent of its impacts;

(ii) any prior impacts that have affected the project area;

(iii) the project location plotted on a copy of a USGS 7.5' topographic quadrangle, showing the area of archeological investigations and any archeological sites encountered;

(iv) a summary of the scope, findings, and conclusions of the archeological investigations;

(v) evaluations of each archeological site's suitability for official State Antiquities Landmark designation under §26.10 of this title (relating to Criteria for Evaluating Archeological Sites); and

(vi) a project approval request or recommendations for further work, as appropriate.

(C) THC review of interim reports. THC shall respond in writing to interim reports within 30 days of receipt. When appropriate, THC will concur with the report findings and recommendations after review. If THC does not respond to TPWD within that period of time, TPWD may proceed with internal authorization of the proposed project without further notice to THC.

(D) Draft reports. TPWD archeologists and archeologists contracted by TPWD who conduct investigations under the annual Antiquities Permit at the discretion of the CRPD shall provide the CRPD with concise, informative draft reports with supporting documents. All interim reports described in subparagraph (B) of this paragraph will be expanded into draft reports meeting the requirements of the Council of Texas Archeologists Guidelines for Cultural Resources Management Short Reports. The archeologist will submit shapefiles of areas investigated and copies of TexSite forms for the sites described in the report to the CRPD along with each draft report. All sites shall

have trinomial designations assigned by the Texas Archeological Research Laboratory, The University of Texas at Austin.

(E) Draft annual Antiquities Permit report. The TPWD draft annual Antiquities Permit report on each year's investigations will be compiled and edited by the CRPD or their designee, and the CRPD will submit the report to THC for review by May 1 of the following year. THC shall provide comments in writing on the draft annual report within 30 days of receipt. If THC does not respond to TPWD within that period of time, TPWD may proceed with publication of the final annual report without further notice to THC.

(F) Final annual Antiquities Permit report. The final TPWD annual Antiquities Permit report shall be in a format that conforms to §26.16(a)(1) of this title (relating to Reports Relating to Archeological Permits). Upon approval of the draft annual Antiquities Permit report by THC, TPWD will submit the final report to THC no later than 120 days after TPWD has received THC approval, and will distribute copies in accord with §26.16 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301702

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 20, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-1858



PART 5. TEXAS STATE CEMETERY COMMITTEE

CHAPTER 71. TEXAS STATE CEMETERY

13 TAC §§71.11, 71.13 - 71.15, 71.21

Introduction and Background.

The Texas State Cemetery Committee (the "Committee") adopts amendments to Chapter 71, §§71.11, 71.13 - 71.15, and 71.21 concerning the Texas State Cemetery ("Cemetery") without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1946). In the prior notice, the Committee proposed amendments to the Chapter 71 rules concerning monuments, vaults and graveliners, cenotaphs, landscaping, and burial reservations.

These rule amendments are adopted pursuant to the Commission's rulemaking authority found in Texas Government Code §2165.256(i) (Vernon 2008) and §2165.2561(m) (Vernon Supp. 2012).

Justification for the Rule.

The adopted rule amendments to Chapter 71 designated as §§71.11, 71.13 - 71.15, and 71.21 clarify current business practices.

Summary of Comments.

The comment period ended April 22, 2013. No comments were received.

Statutory Authority.

The rule amendments are adopted pursuant to Texas Government Code §2165.256(i) (Vernon 2008) and §2165.2561(m) (Vernon Supp. 2012).

Cross Reference to Statute.

The adopted rules affect §2165.256 and §2165.2561 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301696

Kay Molina

General Counsel

Texas State Cemetery Committee

Effective date: May 20, 2013

Proposal publication date: March 22, 2013

For further information, please call: (512) 463-4257



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.16, concerning Contracts for Materials and Services, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1499). Specifically, these amendments will update the title of "Deputy Commissioner for Business and Finance/Chief Operating Officer" to "Deputy Commissioner for Finance and Administration/Chief Operating Officer," thereby reflecting the current and correct title for this office. These amendments further provide that the Commissioner's quarterly reports to the Board describing all contracts for materials and services need only contain those contracts that were executed under delegated authority and not considered by the Board or a Board Committee or by the Chair, Vice Chair, and Chair of the responsible board committees. Finally, these amendments authorize the Deputy Commissioner for Finance and Administration/Chief Operating Officer, in addition to the Commissioner, to approve contracts for the purchase of materials or services with a value over \$100,000, including the awarding of grants, when such an award involves no discretion by the Board or agency staff, i.e., when the agency is required by statute to enter into the contract.

There were no comments received concerning these amendments.

The amendments are adopted under Texas Education Code §61.027, which provides the Coordinating Board with the authority to effectuate the provisions of Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301709

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 20, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 427-6114



SUBCHAPTER E. STUDENT COMPLAINT PROCEDURE

19 TAC §1.115

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.115, concerning Referral of Certain Complaints to Other Agencies or Entities, with changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1948). Specifically, this section requires that the Coordinating Board refer student complaints it receives pertaining to a component institution in the University of Texas System, Texas A&M University System, the University of Houston System, the University of North Texas System, the Texas Tech University System, or the Texas State University System to the appropriate university system for investigation and resolution. Student complainants have raised concerns that such mandatory referrals may lead, in certain cases, to potential conflicts in the complaint being fairly resolved. The amendment would provide THECB with discretion in making these referrals.

The following comments were received concerning the amendments.

Comment 1: The University of Texas at Austin expressed concern that the proposed rule may create ambiguity and confusion. Specifically, they indicated that this rule change may leave the institution without a clear understanding of the status of a student complaint as the proposed rule does not expressly state that notice must be provided to an institution when a student complaint has been filed. Likewise, they expressed concern that the rule does not indicate that the institution would be given an opportunity to respond or participate in the investigation of or otherwise participate in the resolution of the student complaint. Accordingly, while their preferred method would be to have the student complaint referred directly to UT System or to the institution as appropriate, UT Austin requested that, as an alternative, the rule be amended to require that an institution that is the subject of a complaint receive timely notice of the complaint and that a process for institutional input and participation in the investigation and resolution be established in the Administrative Code.

Staff Response: Staff agree that the appropriate university system should be provided notice when THECB receives a complaint pertaining to an institution in the system regardless of whether the complaint is referred to the system, unless in the unlikely event, as set forth in Texas Education Code (TEC) §61.031, such notice would jeopardize an undercover investigation. THECB has amended §1.115(2) accordingly and as consistent with the language of TEC §61.031(c). Through being informed of the status of the investigation, the system will

be able to provide input and participate in the investigation and resolution of the complaint.

Moreover, §1.116, Agency Investigation of Student Complaint, provides that any complainant must first exhaust all grievance and appeal procedures that an institution establishes. It is feasible that this could involve the institution's university system. It also provides that THECB staff, as appropriate (e.g., the complaint is not frivolous on its face), will request a written response to the complaint from the institution. Along with a request for response, the agency will transmit to the institution a copy of the student complaint form and any attachments thereto. The institution has thirty days from receiving the request for response to provide a written response to the complaint. Agency staff, in its discretion, may contact the institution to obtain additional information upon the Agency's receipt of the institution's response or at any time during the investigation of the complaint. With the above referenced amendment to §1.115(2), for those complaints the THECB does not refer to a university system, the system can have input into the investigation on its own as well as through the responses provided by one of its component institutions.

Comment 2: The University of North Texas System and its component institutions, the University of North Texas, the University of North Texas Health Science Center, and the University of North Texas at Dallas ("UNT System") asserted that THECB does not have statutory authority to investigate and resolve student complaints filed by UNT System students. Rather, the UNT System indicated that the UNT System Board of Regents is solely responsible for investigating complaints filed by UNT System students and for resolving such complaints.

Staff Response: Staff does not concur that the proposed change to the student complaint rules conflict with THECB's statutory authority under TEC §61.031. The U.S. Department of Education promulgated Program Integrity regulations which require each state to have a "process to review and appropriately act on complaints concerning higher education institutions including enforcing applicable State laws" in order for the institution to be legally authorized by the state and be eligible for federal Title IV funds. See 34 CFR §600.9(a)(1). Accordingly, in June 2011, THECB asked for an opinion from the Texas Attorney General's Office as to whether TEC §61.031 granted THECB appropriate statutory authority to establish a state higher education complaint procedure that complied with the Program Integrity regulations. See RQ-0982GA (June 24, 2011). The Texas Attorney General opined that TEC §61.031 did provide THECB such statutory authority. Specifically, as explained in his December 22, 2011 opinion:

"[T]he Texas Legislature granted [THECB] authority to investigate, 'tak[e] action other than to investigate,' resolve, and close the file on a complaint. Based on this broad grant of authority to [THECB], we conclude that [THECB] has authority to 'appropriately act on' complaints, as [the U.S. Department of Education] regulations require."

Op. Tex. Att'y Gen. No. GA-0902 (2011) (internal citations omitted).

As the U.S. Department of Education explained in a "Dear Colleague" Letter regarding state authorization:

"Question 13: For purposes of acting on complaints, would a governing board that has oversight of multiple institutions as part of a State university system satisfy the requirement that a complainant have access to a process that is independent of any institution?

"Answer 13: As stated in the preamble to the final regulations, 'The State is not permitted to rely on institutional complaint and sanctioning processes in resolving complaints it receives as these do not provide the necessary independent process for reviewing a complaint. A State may, however, monitor an institution's complaint resolution process to determine whether it is addressing the concerns that are raised within it.' A State may rely on a governing board or central office of a State-wide system of public institutions if the State has made the determination the governing board or central office is sufficiently independent to provide successful oversight of complaints for the institutions in that system." (Emphasis added.)

"Dear Colleague" Letter from U.S. Department of Education Office of Postsecondary Education, Subject: Implementation of Program Integrity Regulations (March 17, 2011) (internal citations omitted).

Several student complainants have raised concerns that mandatory referrals to university systems of their complaints relating to a component institution lead to potential conflicts in the complaint being fairly resolved. Accordingly, the proposed rule change would provide THECB with discretion to investigate complaints or to refer them to university systems. Staff have determined that the THECB rule is consistent with Op. Tex. Att'y Gen. No. GA-0902 (2011) as well as the U.S. Department of Education's guidance on the Program Integrity regulations.

No additional changes were made as a result of these UNT System comments.

The amendment is adopted under Texas Education Code §61.031, which provides the Coordinating Board with the authority to establish policies and procedures relating to complaint investigation and resolution; §61.028, which provides that the Board can delegate these responsibilities to the Commissioner; and §61.027, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Texas Education Code, Chapter 61.

§1.115. Referral of Certain Complaints to Other Agencies or Entities.

Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:

(1) Complaints alleging that an institution has violated state consumer protection laws, e.g., laws related to fraud or false advertising, shall be referred to the Consumer Protection Division of the Office of the Attorney General of Texas for investigation and resolution.

(2) Complaints pertaining to an institution in the University of Texas System, Texas A&M University System, University of Houston System, University of North Texas System, Texas Tech University System, or Texas State University System may be referred to the appropriate university system for investigation and resolution. If a complaint is not referred to a university system for investigation and resolution, the Agency will notify the system, at least quarterly until final disposition of the complaint, of the status of any investigation unless the notice would jeopardize an undercover investigation.

(3) If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such accrediting agency, the Agency may request the accrediting agency to send quarterly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The

Agency shall have the right to adopt any decision proposed or made or any course of action proposed or taken by the accrediting agency as the final resolution of the matter before the Agency. In the alternative, the Agency shall have the right to enter its own decision based on the investigative findings of the accrediting agency to the extent they are able to be provided. The Agency shall have the right to terminate the referral of the complaint to the accrediting agency at any time and may proceed to investigate and adjudicate the complaint.

(4) If the Agency determines that the complaint is appropriate for investigation and resolution by an educational association to which the institution belongs, the Agency may refer the complaint to the educational association. If the Agency refers the complaint to such an educational association, the educational association shall send monthly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to accept, modify, or reject any decision proposed or made or any course of action proposed or taken by the educational association. The Agency shall have the right to terminate the referral of the complaint to the educational association if the Agency determines that the educational association is not appropriately addressing the complaint.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2013.

TRD-201301710

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 20, 2013

Proposal publication date: March 22, 2013

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, regarding Licensure by Examination, with changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1075). The amendments will allow staff to more efficiently process license applications by eliminating an outdated exception to applying for licensure by exam. In addition to the changes which were proposed originally, the adopted amendment deletes subsection (b)(3) of the rule, which addressed licensees who are retaking the national exam as part of applying by endorsement. Those applicants are no longer required to retake the exam, and so this paragraph is no longer relevant or required.

The amendments require that a person register for the national exam through Texas to receive a license by examination and eliminate the possibility of applying for licensure by examination after having passed the exam as authorized by another state.

No comments were received regarding the amendment.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§329.2. Licensure by Examination.

(a) Requirements. An applicant applying for licensure by examination must:

(1) meet the requirements as stated in §329.1 of this title (relating to General Licensure Requirements and Procedures);

(2) register to take the national exam through this state, and have the first score report sent to this state; and

(3) pass the National Physical Therapy Exam (NPTE) for physical therapists or physical therapist assistants with the score set by the board. Score reports must be sent directly to the board by the authorized score reporting service.

(b) Re-examination.

(1) First re-examination. An applicant who fails the exam the first time is eligible to take the examination a second time after submitting a re-exam application and fee.

(2) Second or subsequent re-examination. An applicant who fails the exam twice or more must complete additional education before taking the exam again. The amount of additional education is set forth in the attached chart. To be eligible to register for the exam again, the applicant must submit a letter that identifies the area(s) of weakness and describes the plan that addresses the weakness(s). The letter must be accompanied by proof that the additional education has been successfully completed. Additional education may be one or more of the following:

(A) A commercial review course.

(B) An individual tutorial. The completed tutorial must be signed by the tutor and notarized, and include the tutor's curriculum vitae. If the applicant is applying for a PT license, the tutor must be a licensed PT. If the applicant is applying for a PTA license, the tutor must be a licensed PT, or a licensed PTA who is associated with a Texas PTA program.

(C) Board-approved continuing competence (CCU) activities.

Figure: 22 TAC §329.2(b)(2)(C)

(c) Failure of PT exam. An applicant who fails the physical therapy examination may apply for licensure as a PTA and take the physical therapist assistant examination if he meets all other requirements for licensure.

(d) Exam Accommodations. The board will provide reasonable accommodations for the national exam. An individual requesting special accommodations must submit the request to the board at least 30 days prior to the deadline for registering for the licensing examination. The board will process the accommodation request once all of the required information and documentation is received. The request includes the following forms:

(1) A completed Accommodations Request Form;

(2) A Professional Documentation of Disability Form, completed by a diagnostician meeting the board's requirements, which includes documentation of tests and measures used to diagnose the disability, and the results of those tests and measures;

(3) A completed Consent to Release Information Form; and

(4) The Academic Program Verification Form completed by the director of the academic program attended, if accommodations were granted by the PT or PTA program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301774

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: May 23, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 305-6900



CHAPTER 335. PROFESSIONAL TITLE

22 TAC §335.1

The Texas Board of Physical Therapy Examiners adopts amendments to §335.1, regarding Use of Title, without changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1076). The amendments clarify the professional designation initials physical therapists and physical therapist assistants use to identify themselves.

The amendment changes the title of the rule to avoid confusion over the initials "LPT" and "LPTA," which are no longer used to designate a licensed physical therapist and licensed physical therapist assistant.

No comments were received regarding the amendment.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act in order to carry out its duties in administering the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301775

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Effective date: May 23, 2013

Proposal publication date: February 22, 2013

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.41

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §133.41, general and special hospitals, concerning Preadmission Screening and Resident Review (PASRR) and colored alert wrist bands to identify patient risks in hospitals, with changes to proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1081).

The amendment will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. The amendments explicitly add to the State's regulatory scheme the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization units, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Chapter 17, and the PASARR rule at 40 TAC Chapter 19 has been repealed. Through promulgation of the four rule amendments described in this preamble, the department is requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

The amendment to §133.41(f)(6) requires that the governing body of each hospital put in place the Standardized Patient Risk Identification System required under Health and Safety Code, §311.004 (unless exempt to adopt an alternative), to alert hospital staff that the following medical risks are present in patients wearing these specific color-coded wristbands: (i) red wristbands for allergies; (ii) yellow wristbands for fall risks; (iii) purple wristbands for do-not-resuscitate status; and (iv) at the hospital's discretion, green wristbands for latex allergies

and pink wristbands for restricted extremity. This system, which is consistent with, and based upon, the American Hospital Association's recommendations, was recommended by the ad hoc committee of hospital representatives which the Executive Commissioner of the Health and Human Services Commission appointed pursuant to SB 7, Article 5.

SECTION-BY-SECTION SUMMARY

The four rule amendments to §§133.41, 134.41, 411.482 and 411.628 are nearly identical and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

The rule amendment to §133.41(f)(6) concerning the governing body was revised by the addition of subparagraphs (D), (E) and (F). The new language requires the governing body to ensure that specific colored alert wrist bands are utilized in hospitals as follows: red wrist bands for allergies; yellow wrist bands for fall risks; and purple wrist bands for do-not-resuscitate status. New language also allows the governing body to consider use of optional condition alert wrist bands as follows: green wrist bands for latex allergies and pink wrist bands for restricted extremity. In addition, new language requires the governing body to implement and enforce a policy and procedure regarding removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands. Section 133.41(f)(6)(B) and (C) were amended for punctuation clarification.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. Comments were received from the Texas Hospital Association. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations as discussed in the summary of comments.

Comment: The commenter requested a six-month delay in implementation from the rules effective date for all of the agencies involved.

Response: The commission appreciates the comment, but DADS, the agency primarily responsible for administering the federal PASRR Program in Texas, has promulgated new, detailed PASRR Program rules to which other state agencies, including the department, may refer, and any new revisions are outside of the department's control. No change was made as a result of this comment.

Comment: The commenter also submitted comments on the substance of DADS' rules in 40 TAC Chapter 17 as they apply to hospitals under that chapter and to rules in Chapters 133, 134, and 411. The comments/recommendations specifically concerned §17.103, Fair Hearing Process; §17.104, Exceptions to PASRR Level II Evaluations and Determinations; §17.201,

Preadmission Screening Process; §17.202, Expedited Admission Process; §17.302, Nursing Facility Responsibilities; and §17.303, Local Authority Responsibilities.

Response: The commission appreciates the comments, but DADS, the agency primarily responsible for administering the federal PASRR Program in Texas, has promulgated new, detailed PASRR Program rules to which other state agencies, including the department, may refer, and any new revisions are outside of the department's control. No change was made as a result of this comment.

A minor clarification was made to §133.41(f)(6)(B) by replacing the word "grated" with "granted."

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§133.41. Hospital Functions and Services.

(a) Anesthesia services. If the hospital furnishes anesthesia services, these services shall be provided in a well-organized manner under the direction of a qualified physician in accordance with the Medical Practice Act and the Nursing Practice Act. The hospital is responsible for and shall document all anesthesia services administered in the hospital.

(1) Organization and staffing. The organization of anesthesia services shall be appropriate to the scope of the services offered. Only personnel who have been approved by the facility to provide anesthesia services shall administer anesthesia. All approvals or delegations of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service.

(2) Delivery of services. Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedure shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(A) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under paragraph (1) of this subsection shall be performed within 48 hours prior to surgery.

(B) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occurring during the anesthesia including time, description of symptoms,

review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the post-anesthesia care unit and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient's oxygen saturation level.

(i) With respect to inpatients, a post-anesthesia evaluation for proper anesthesia recovery shall be performed after transfer from the post-anesthesia care unit and within 48 hours after surgery by the person administering the anesthesia, registered nurse (RN), or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for postoperative monitoring of anesthesia.

(ii) With respect to outpatients, immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, RN, or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for postoperative monitoring of anesthesia.

(b) Chemical dependency services.

(1) Chemical dependency unit. A hospital may not admit patients to a chemical dependency services unit unless the unit is approved by the Department of State Health Services (department) as meeting the requirements of §133.163(q) of this title (relating to Spatial Requirements for New Construction).

(2) Admission criteria. A hospital providing chemical dependency services shall have written admission criteria that are applied uniformly to all patients who are admitted to the chemical dependency unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for chemical dependency services.

(i) The following conditions are not generally recognized as responsive to treatment in a treatment facility for chemical dependency unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability;

(II) learning disabilities; or

(III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to chemical dependency services.

(iii) A minor patient shall be separated from adult patients.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(C) A voluntarily admitted patient shall sign an admission consent form prior to admission to a chemical dependency unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing chemical dependency services in an identifiable unit within the hospital shall comply with Chapter 448, Subchapter B of this title (relating to Standard of Care Applicable to All Providers).

(c) Comprehensive medical rehabilitation services.

(1) Rehabilitation units. A hospital may not admit patients to a comprehensive medical rehabilitation services unit unless the unit is approved by the department as meeting the requirements of §133.163(z) of this title.

(2) Equipment and space. The hospital shall have the necessary equipment and sufficient space to implement the treatment plan described in paragraph (7)(C) of this subsection and allow for adequate care. Necessary equipment is all equipment necessary to comply with all parts of the written treatment plan. The equipment shall be on-site or available through an arrangement with another provider. Sufficient space is the physical area of a hospital which in the aggregate, constitutes the total amount of the space necessary to comply with the written treatment plan.

(3) Emergency requirements. Emergency personnel, equipment, supplies and medications for hospitals providing comprehensive medical rehabilitation services shall be as follows.

(A) A hospital that provides comprehensive medical rehabilitation services shall have emergency equipment, supplies, medications, and designated personnel assigned for providing emergency care to patients and visitors.

(B) The emergency equipment, supplies, and medications shall be properly maintained and immediately accessible to all areas of the hospital. The emergency equipment shall be periodically tested according to the policy adopted, implemented and enforced by the hospital.

(C) At a minimum, the emergency equipment and supplies shall include those specified in subsection (e)(4) of this section.

(D) The personnel providing emergency care in accordance with this subsection shall be staffed for 24-hour coverage and accessible to all patients receiving comprehensive medical rehabilitation services. At least one person who is qualified by training to perform advanced cardiac life support and administer emergency drugs shall be on duty each shift.

(E) All direct patient care licensed personnel shall maintain current certification in cardiopulmonary resuscitation (CPR).

(4) Medications. A rehabilitation hospital's governing body shall adopt, implement and enforce policies and procedures that require all medications to be administered by licensed nurses, physicians, or other licensed professionals authorized by law to administer medications.

(5) Organization and Staffing.

(A) A hospital providing comprehensive medical rehabilitation services shall be organized and staffed to ensure the health and safety of the patients.

(i) All provided services shall be consistent with accepted professional standards and practice.

(ii) The organization of the services shall be appropriate to the scope of the services offered.

(iii) The hospital shall adopt, implement and enforce written patient care policies that govern the services it furnishes.

(B) The provision of comprehensive medical rehabilitation services in a hospital shall be under the medical supervision of a physician who is on duty and available, or who is on-call 24 hours each day.

(C) A hospital providing comprehensive medical rehabilitation services shall have a medical director or clinical director who supervises and administers the provision of comprehensive medical rehabilitation services.

(i) The medical director or clinical director shall be a physician who is board certified or eligible for board certification in physical medicine and rehabilitation, orthopedics, neurology, neurosurgery, internal medicine, or rheumatology as appropriate for the rehabilitation program.

(ii) The medical director or clinical director shall be qualified by training or at least two years training and experience to serve as medical director or clinical director. A person is qualified under this subsection if the person has training and experience in the treatment of rehabilitation patients in a rehabilitation setting.

(6) Admission criteria. A hospital providing comprehensive medical rehabilitation services shall have written admission criteria that are applied uniformly to all patients who are admitted to the comprehensive medical rehabilitation unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of a minor for a condition which is not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services.

(i) The following conditions are not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability;

(II) learning disabilities; or

(III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to comprehensive medical rehabilitation services.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(7) Care and services.

(A) A hospital providing comprehensive medical rehabilitation services shall use a coordinated interdisciplinary team which is directed by a physician and which works in collaboration to develop and implement the patient's treatment plan.

(i) The interdisciplinary team for comprehensive medical rehabilitation services shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

(I) physical therapy;

(II) occupational therapy;

(III) speech-language pathology;

(IV) therapeutic recreation;

(V) social services and case management;

(VI) dietetics;

(VII) psychology;

(VIII) respiratory therapy;

(IX) rehabilitative nursing;

(X) certified orthotics;

(XI) certified prosthetics;

(XII) pharmaceutical care; and

(XIII) in the case of a minor patient, persons who have specialized education and training in emotional, mental health, or chemical dependency problems, as well as the treatment of minors.

(ii) The coordinated interdisciplinary team approach used in the rehabilitation of each patient shall be documented by periodic entries made in the patient's medical record to denote:

(I) the patient's status in relationship to goal attainment; and

(II) that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(B) An initial assessment and preliminary treatment plan shall be performed or established by the physician within 24 hours of admission.

(C) The physician in coordination with the interdisciplinary team shall establish a written treatment plan for the patient within seven working days of the date of admission.

(i) Comprehensive medical rehabilitation services shall be provided in accordance with the written treatment plan.

(ii) The treatment provided under the written treatment plan shall be provided by staff who are qualified to provide services under state law. The hospital shall establish written qualifications for services provided by each discipline for which there is no applicable state statute for professional licensure or certification.

(iii) Services provided under the written treatment plan shall be given in accordance with the orders of physicians, dentists, podiatrists or practitioners who are authorized by the governing body, hospital administration, and medical staff to order the services, and the orders shall be incorporated in the patient's record.

(iv) The written treatment plan shall delineate anticipated goals and specify the type, amount, frequency, and anticipated duration of service to be provided.

(v) Within 10 working days after the date of admission, the written treatment plan shall be provided. It shall be in the person's primary language, if practicable. What is or would have been practicable shall be determined by the facts and circumstances of each case. The written treatment plan shall be provided to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(vi) The written treatment plan shall be reviewed by the interdisciplinary team at least every two weeks.

(vii) The written treatment plan shall be revised by the interdisciplinary team if a comprehensive reassessment of the patient's status or the results of a patient case review conference indicates the need for revision.

(viii) The revision shall be incorporated into the patient's record within seven working days after the revision.

(ix) The revised treatment plan shall be reduced to writing in the person's primary language, if practicable, and provided to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(8) Discharge and continuing care plan. The patient's interdisciplinary team shall prepare a written continuing care plan that addresses the patient's needs for care after discharge.

(A) The continuing care plan for the patient shall include recommendations for treatment and care and information about the availability of resources for treatment or care.

(B) If the patient's interdisciplinary team deems it impracticable to provide a written continuing care plan prior to discharge, the patient's interdisciplinary team shall provide the written continuing care plan to the patient within two working days after the date of discharge.

(C) Prior to discharge or within two working days after the date of discharge, the written continuing care plan shall be provided in the person's primary language, if practicable, to:

(i) the patient;

(ii) a person designated by the patient; and

(iii) upon request, to a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(d) Dietary services. The hospital shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company or an arrangement with another hospital may meet this requirement if the company or other hospital has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company or other hospital maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the hospital medical staff for recommendations of dietetic policies affecting patient treatment. The hospital shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) The hospital shall have a full-time employee who is qualified by experience or training to serve as director of the food and dietetic service, and be responsible for the daily management of the dietary services.

(B) There shall be a qualified dietitian who works full-time, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(i) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

(iv) make an assessment of the nutritional status and adequacy of nutritional regimen, as appropriate;

(v) provide diet counseling and teaching, as appropriate;

(vi) document nutritional status and pertinent information in patient medical records, as appropriate;

(vii) approve menus; and

(viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

(i) participate in established departmental or hospital training pertinent to assigned duties;

(ii) conform to food handling techniques in accordance with paragraph (2)(E)(viii) of this subsection;

(iii) adhere to clearly defined work schedules and assignment sheets; and

(iv) comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job specific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include, but not be limited to:

(i) quality assessment and performance improvement program;

(ii) frequency of meals served;

(iii) nonroutine occurrences; and

(iv) identification of patient trays; and

(E) maintain authority and responsibility for the following, but not be limited to:

(i) orientation and training;

(ii) performance evaluations;

(iii) work assignments;

(iv) supervision of work and food handling techniques;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) ensuring there is a four-day food supply on hand at all times;

(vii) menu planning; and

(viii) ensuring compliance with §§229.161 - 229.171 of this title (relating to Texas Food Establishments).

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by the physician(s) responsible for the care of the patients. The dietary department of the hospital shall:

(i) establish procedures for the processing of therapeutic diets to include, but not be limited to:

(I) accurate patient identification;

(II) transcription from nursing to dietary services;

(III) diet planning by a dietitian;

(IV) regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

(ii) ensure that therapeutic diets are planned in writing by a qualified dietitian;

(iii) ensure that menu substitutions are approved by a qualified dietitian;

(iv) document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate therapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of the physician(s) or appropriately credentialed practitioner(s) responsible for the care of the patients. The following requirements shall be met.

(i) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the Recommended Dietary Allowances (RDA), as published by the Food and Nutrition Board, Commission on Life Sciences, National Research Council, Tenth edition, 1989, which may be obtained by writing the National Academies Press, 500 Fifth Street, NW Lockbox 285, Washington, D.C. 20055, telephone (888) 624-8373.

(ii) A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The hospital shall adopt, implement, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

(i) be revised as needed, not to exceed 5 years;

(ii) be appropriate for the diets routinely ordered in the hospital;

(iii) have standards in compliance with the RDA;

(iv) contain specific diets which are not in compliance with RDA; and

(v) be used as a guide for ordering and serving diets.

(e) Emergency services. All licensed hospital locations, including multiple-location sites, shall have an emergency suite that complies with §133.161(a)(1)(A) of this title (relating to Requirements for Buildings in Which Existing Licensed Hospitals are Located) or §133.163(f) of this title, and the following.

(1) Organization. The organization of the emergency services shall be appropriate to the scope of the services offered.

(A) The services shall be organized under the direction of a qualified member of the medical staff who is the medical director or clinical director.

(B) The services shall be integrated with other departments of the hospital.

(C) The policies and procedures governing medical care provided in the emergency suite shall be established by and shall be a continuing responsibility of the medical staff.

(D) Medical records indicating patient identification, complaint, physician, nurse, time admitted to the emergency suite, treatment, time discharged, and disposition shall be maintained for all emergency patients.

(2) Personnel.

(A) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the hospital.

(B) Except for comprehensive medical rehabilitation hospitals and pediatric and adolescent hospitals that generally provide care that is not administered for or in expectation of compensation:

(i) there shall be on duty and available at all times at least one person qualified as determined by the medical staff to initiate immediate appropriate lifesaving measures; and

(ii) in general hospitals where the emergency treatment area is not contiguous with other areas of the hospital that maintain 24 hour staffing by qualified staff (including but not limited to separation by one or more floors in multiple-occupancy buildings), qualified personnel must be physically present in the emergency treatment area at all times.

(C) Except for comprehensive medical rehabilitation hospitals and pediatric and adolescent hospitals that generally provide care that is not administered for or in expectation of compensation, the hospital shall provide that one or more physicians shall be available at all times for emergencies, as follows.

(i) General hospitals, except for hospitals designated as critical access hospitals (CAHs) by the Centers for Medicare & Medicaid Services (CMS), located in counties with a population of 100,000 or more shall have a physician qualified to provide emergency medical care on duty in the emergency treatment area at all times.

(ii) Special hospitals, hospitals designated as CAHs by the CMS, and general hospitals located in counties with a population of less than 100,000 shall have a physician on-call and able to respond in person, or by radio or telephone within 30 minutes.

(D) Schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates, shall be maintained. Schedules shall be retained for no less than one year.

(3) Supplies and equipment. Adequate age appropriate supplies and equipment shall be available and in readiness for use. Equipment and supplies shall be available for the administration of intravenous medications as well as facilities for the control of bleeding

and emergency splinting of fractures. Provision shall be made for the storage of blood and blood products as needed. The emergency equipment shall be periodically tested according to the policy adopted, implemented and enforced by the hospital.

(4) Required emergency equipment. At a minimum, the age appropriate emergency equipment and supplies shall include the following:

- (A) emergency call system;
- (B) oxygen;
- (C) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;
- (D) cardiac defibrillator;
- (E) cardiac monitoring equipment;
- (F) laryngoscopes and endotracheal tubes;
- (G) suction equipment;
- (H) emergency drugs and supplies specified by the medical staff;
- (I) stabilization devices for cervical injuries;
- (J) blood pressure monitoring equipment; and
- (K) pulse oximeter or similar medical device to measure blood oxygenation.

(5) Participation in local emergency medical service (EMS) system.

(A) General hospitals shall participate in the local EMS system, based on the hospital's capabilities and capacity, and the locale's existing EMS plan and protocols.

(B) The provisions of subparagraph (A) of this paragraph do not apply to a comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital that generally provides care that is not administered for or in expectation of compensation.

(6) Emergency services for survivors of sexual assault.

(A) The hospital shall develop, implement and enforce policies and procedures to ensure that a sexual assault survivor who presents to the hospital following a sexual assault receives one of the following:

- (i) the care specified under subparagraph (B) of this paragraph; or
- (ii) stabilization and transfer to a health care facility designated in a community-wide plan as the health care facility for treating sexual assault survivors, where the survivor will receive the care specified under subparagraph (B) of this paragraph.

(B) A hospital providing care to a sexual assault survivor shall provide the survivor with the following:

(i) a forensic medical examination in accordance with Government Code, Chapter 420, Subchapter B, when the examination has been requested by a law enforcement agency under Code of Criminal Procedure, Article 56.06, or is conducted under Code of Criminal Procedure, Article 56.065. If a sexual assault survivor is age 18 or older and has not reported the assault to a law enforcement agency, a hospital shall provide this forensic medical examination, when the sexual assault survivor has arrived at the facility not later than 96 hours after the time the assault occurred and has consented to the examination;

(ii) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(iii) access to a sexual assault program advocate, if available, as provided by Code of Criminal Procedure, Article 56.045;

(iv) the information form required by Health and Safety Code, §323.005;

(v) a private treatment room, if available;

(vi) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and

(vii) the name and telephone number of the nearest sexual assault crisis center.

(C) The hospital must obtain documented consent before providing the forensic medical examination and treatment.

(D) Upon request, the hospital shall submit to the department their plan for the provision of service to sexual assault survivors. The plan must describe how the hospital will ensure that the services required under subparagraph (B) of this paragraph will be provided.

(i) The hospital shall submit the plan by the 60th day after the department makes the request.

(ii) The department will approve or reject the plan not later than 120th day following the submission of the plan.

(iii) If the department is not able to approve the plan, the department will return the plan to the hospital and will identify the specific provisions with which the hospital's plan failed to comply.

(iv) The hospital shall correct and resubmit the plan to the department for approval not later than the 90th day after the plan is returned to the hospital.

(f) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the hospital, including appointment of the medical staff. For hospitals owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution and bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff.

(A) The governing body shall ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced.

(B) The governing body shall approve medical staff bylaws and other medical staff rules and regulations.

(C) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital collaborates with physicians providing services at the hospital to develop quality initiatives, through the adoption, implementation, and enforcement of appropriate hospital policies and procedures, to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

(D) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital implements a newborn audiological screening program, consistent with the requirements of Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), and performs, either directly or through a transfer agreement, audiological screenings for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged. These audiological screenings are required to be performed on all newborns or infants before discharge from the facility unless:

- (i) a parent or legal guardian of the newborn or infant declines the screening;
- (ii) the newborn or infant requires emergency transfer to a tertiary care facility prior to the completion of the screening; or
- (iii) the screening previously has been completed.

(E) The governing body shall determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff.

(i) In considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges, the governing body must ensure that each physician, podiatrist, and dentist is afforded procedural due process.

(I) If a hospital's credentials committee has failed to take action on a completed application as required by subclause (VIII) of this clause, or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Civil Practice and Remedies Code (CPRC), Chapter 154. The mediation shall be conducted by a person meeting the qualifications required by CPRC §154.052 and within a reasonable period of time.

(II) Subclause (I) of this clause does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(III) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(IV) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(V) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(VI) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(VII) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification pro-

grams approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(VIII) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

(ii) The governing body is authorized to adopt, implement and enforce policies concerning the granting of clinical privileges to advanced practice nurses and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(I) If the governing body of a hospital has adopted, implemented and enforced a policy of granting clinical privileges to advanced practice nurses or physician assistants, an individual advanced practice nurse or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(II) If an advanced practice nurse or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the advanced practice nurse or physician assistant. At a minimum, the hospital shall provide the advanced practice nurse or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(III) If a hospital extends clinical privileges to an advanced practice nurse or physician assistant conditioned on the advanced practice nurse or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the advanced practice nurse or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an advanced practice nurse or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the advanced practice nurse or physician assistant in writing that the advanced practice nurse's or physician assistant's clinical privileges no longer exist at that hospital.

(IV) Nothing in this clause shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, or any other law relating to the scope of practice of physicians, advanced practice nurses, or physician assistants.

(V) This clause does not apply to an employer-employee relationship between an advanced practice nurse or physician assistant and a hospital.

(F) The governing body shall ensure that the hospital complies with the requirements concerning physician communication and contracts as set out in Health and Safety Code, §241.1015 (Physician Communication and Contracts).

(G) The governing body shall ensure the hospital complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with the Medical Practice Act, Occupations Code, §160.002 and §160.003.

(H) The governing body shall be responsible for and ensure that any policies and procedures adopted by the governing body to implement the requirements of this chapter shall be implemented and enforced.

(5) Hospital administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the hospital.

(6) Patient care. In accordance with hospital policy adopted, implemented and enforced, the governing body shall ensure that:

(A) every patient is under the care of:

(i) a physician. This provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law or the state's regulatory mechanism;

(ii) a dentist who is legally authorized to practice dentistry by the state and who is acting within the scope of his or her license; or

(iii) a podiatrist, but only with respect to functions which he or she is legally authorized by the state to perform.

(B) patients are admitted to the hospital only by members of the medical staff who have been granted admitting privileges;

(C) a physician is on duty or on-call at all times;

(D) specific colored condition alert wrist bands that have been standardized for all hospitals licensed under Health and Safety Code, Chapter 241, are used as follows:

(i) red wrist bands for allergies;

(ii) yellow wrist bands for fall risks; and

(iii) purple wrist bands for do not resuscitate status;

(E) the governing body shall consider the addition of the following optional condition alert wrist bands. This consideration must be documented in the minutes of the meeting of the governing body in which the discussion was held:

(i) green wrist bands for latex allergy; and

(ii) pink wrist bands for restricted extremity; and

(F) the governing body shall adopt, implement, and enforce a policy and procedure regarding the removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands.

(7) Services. The governing body shall be responsible for all services furnished in the hospital, whether furnished directly or under contract. The governing body shall ensure that services are pro-

vided in a safe and effective manner that permits the hospital to comply with all applicable rules and standards.

(8) Nurse Staffing. The governing body shall adopt, implement and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The governing body policy shall require that hospital administration adopt, implement and enforce a nurse staffing plan and policies that:

(A) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(B) are based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) ensure that all nursing assignments consider client safety, and are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(D) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(E) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(F) protect from retaliation nurses who provide input to the nurse staffing committee; and

(G) comply with subsection (o) of this section.

(g) Infection control. The hospital shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and surveillance of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control professional. The hospital shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling health care associated infections and communicable diseases between patients and personnel.

(B) The infection control professional shall maintain a log of all reportable diseases and health care associated infections designated as epidemiologically significant according to the hospital's infection control policies.

(C) A written policy shall be adopted, implemented and enforced for reporting all reportable diseases to the local health authority and the Infectious Disease Surveillance and Epidemiology Branch, Department of State Health Services, Mail Code 2822, P.O. Box 149347, Austin, Texas 78714-9347, in accordance with Chapter 97 of this title (relating to Communicable Diseases), and Health and Safety Code, §§98.103, 98.104, and 98.1045 (relating to Reportable Infections, Alternative for Reportable Surgical Site Infections, and Reporting of Preventable Adverse Events).

(D) The infection control program shall include active participation by the pharmacist.

(2) Responsibilities of the chief executive officer (CEO), medical staff, and chief nursing officer (CNO). The CEO, the medical staff, and the CNO shall be responsible for the following.

(A) The hospital-wide quality assessment and performance improvement program and training programs shall address problems identified by the infection control professional.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The hospital shall adopt, implement, and enforce a written policy to monitor compliance of the hospital and its personnel and medical staff with universal precautions in accordance with HSC Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection.

(h) Laboratory services. The hospital shall maintain directly, or have available adequate laboratory services to meet the needs of its patients.

(1) Hospital laboratory services. A hospital that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 Code of Federal Regulations (CFR), §§493.1 - 493.1780. CLIA 1988 applies to all hospitals with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The hospital shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The hospital shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(D) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(E) When blood and blood components are stored, there shall be written procedures readily available containing directions on how to maintain them within permissible temperatures and including instructions to be followed in the event of a power failure or other disruption of refrigeration. A label or tray with the recipient's first and last names and identification number, donor unit number and interpretation of compatibility, if performed, shall be attached securely to the blood container.

(F) The hospital shall establish a mechanism for ensuring that the patient's physician or other licensed health care professional is made aware of critical value lab results, as established by the medical staff, before or after the patient is discharged.

(4) Chemical hygiene. A hospital that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(i) Linen and laundry services. The hospital shall provide sufficient clean linen to ensure the comfort of the patient.

(1) For purposes of this subsection, contaminated linen is linen which has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(A) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(2) The hospital, whether it operates its own laundry or uses commercial service, shall ensure the following.

(A) Employees of a hospital involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up in-service training to ensure a safe product for patients and to safeguard employees in their work.

(B) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(C) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.

(D) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(E) Contaminated linen shall be handled as little as possible and with a minimum of agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(F) All contaminated linen shall be bagged or put into carts at the location where it was used.

(i) Bags containing contaminated linen shall be closed prior to transport to the laundry.

(ii) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(iii) All linen placed in chutes shall be bagged.

(iv) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(G) Linen shall be processed as follows:

(i) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in Table 5 of §133.169(e) of this title (relating to Tables) shall be met.

(ii) If low-temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(iii) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(H) Flammable liquids shall not be used to process laundry, but may be used for equipment maintenance.

(j) Medical record services. The hospital shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The hospital shall employ or contract with adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The hospital shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC, Chapter 241, Subchapter G (Disclosure of Health Care Information).

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, reflect significant changes in the patient's condition, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) Medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

(6) All orders (except verbal orders) must be dated, timed, and authenticated the next time the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders provides care to the patient, assesses the patient, or documents information in the patient's medical record.

(7) All verbal orders must be dated, timed, and authenticated within 48 hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders.

(A) Use of signature stamps by physicians and other licensed practitioners credentialed by the medical staff may be allowed in hospitals when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the hospital shall have on file a signed statement to the effect that he or she is the only one who has the stamp and uses it. The use of a signature stamp by any other person is prohibited.

(B) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(C) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(8) Medical records (reports and printouts) shall be retained by the hospital in their original or legally reproduced form for a period of at least ten years. A legally reproduced form is a medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

(A) identification data;

(B) the medical history of the patient;

(C) evidence of a physical examination, including a health history, performed no more than 30 days prior to admission or within 24 hours after admission. The medical history and physical examination shall be placed in the patient's medical record within 24 hours after admission;

(D) an updated medical record entry documenting an examination for any changes in the patient's condition when the medical history and physical examination are completed within 30 days before admission. This updated examination shall be completed and documented in the patient's medical record within 24 hours after admission;

(E) admitting diagnosis;

(F) diagnostic and therapeutic orders;

(G) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;

(H) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;

(I) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;

(J) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(K) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and

(L) final diagnosis with completion of medical records within 30 calendar days following discharge.

(9) If a patient was less than 18 years of age at the time he was last treated, the hospital may authorize the disposal of those medical records relating to the patient on or after the date of his 20th birthday or on or after the 10th anniversary of the date on which he was last treated, whichever date is later.

(10) The hospital shall not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(11) The hospital shall provide written notice to a patient, or a patient's legally authorized representative, that the hospital may authorize the disposal of medical records relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

(12) If a licensed hospital should close, the hospital shall notify the department at the time of closure the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(k) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be maintained.

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body;

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges; and

(F) include a requirement that a physical examination and medical history be done no more than 30 days before or 24 hours after an admission for each patient by a physician or other qualified practitioner who has been granted these privileges by the medical staff. The medical history and physical examination shall be placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within the 30 days before admission, an updated examination for any changes in the patient's condition must be completed and documented in the patient's medical record within 24 hours after admission.

(l) Mental health services.

(1) Mental health services unit. A hospital may not admit patients to a mental health services unit unless the unit is approved by the department as meeting the requirements of §133.163(q) of this title.

(2) Admission criteria. A hospital providing mental health services shall have written admission criteria that are applied uniformly to all patients who are admitted to the service.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for mental health services.

(i) The following conditions are not generally recognized as responsive to treatment in a hospital unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability; or

(II) learning disabilities.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to mental health services.

(B) The medical record shall contain evidence that admission consent was given by the patient, the patient's legal guardian, or the managing conservator, if applicable.

(C) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(D) A voluntarily admitted patient shall sign an admission consent form prior to admission to a mental health unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing mental health services shall comply with the following rules administered by the department. The rules are:

(A) Chapter 411, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals);

(B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(C) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(D) Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(E) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(m) Mobile, transportable, and relocatable units. The hospital shall adopt, implement and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the hospital's premises for diagnostic procedures or treatment.

(n) Nuclear medicine services. If the hospital provides nuclear medicine services, these services shall meet the needs of the patients in accordance with acceptable standards of practice and be licensed in accordance with §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material).

(1) Policies and procedures. Policies and procedures shall be adopted, implemented, and enforced which will describe the services nuclear medicine provides in the hospital and how employee and patient safety will be maintained.

(2) Organization and staffing. The organization of the nuclear medicine services shall be appropriate to the scope and complexity of the services offered.

(A) There shall be a medical director or clinical director who is a physician qualified in nuclear medicine.

(B) The qualifications, training, functions, and responsibilities of nuclear medicine personnel shall be specified by the medical director or clinical director and approved by the medical staff.

(3) Delivery of services. Radioactive materials shall be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice and in accordance with §289.256 of this title.

(A) In-house preparation of radiopharmaceuticals shall be by, or under, the direct supervision of an appropriately trained licensed pharmacist or physician.

(B) There shall be proper storage and disposal of radioactive materials.

(C) If clinical laboratory tests are performed by the nuclear medicine services staff, the nuclear medicine staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR Part 493.

(D) Nuclear medicine workers shall be provided personnel monitoring dosimeters to measure their radiation exposure. Exposure reports and documentation shall be available for review.

(4) Equipment and supplies. Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance. The equipment shall be inspected, tested, and calibrated at least annually by qualified personnel.

(5) Records. The hospital shall maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures.

(A) The physician approved by the medical staff to interpret diagnostic procedures shall sign and date the interpretations of these tests.

(B) The hospital shall maintain records of the receipt and disposition of radiopharmaceuticals until disposal is authorized by the department's Radiation Safety Licensing Branch in accordance with §289.256 of this title.

(C) Nuclear medicine services shall be ordered only by an individual whose scope of state licensure and whose defined staff privileges allow such referrals.

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) Organization. The hospital shall have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care.

(A) Nursing services shall be under the administrative authority of a chief nursing officer (CNO) who shall be an RN and comply with one of the following:

(i) possess a master's degree in nursing;

(ii) possess a master's degree in health care administration or business administration;

(iii) possess a master's degree in a health-related field obtained through a curriculum that included courses in administration and management; or

(iv) be progressing under a written plan to obtain the nursing administration qualifications associated with a master's degree in nursing. The plan shall:

(I) describe efforts to obtain the knowledge associated with graduate education and to increase administrative and management skills and experience;

(II) include courses related to leadership, administration, management, performance improvement and theoretical approaches to delivering nursing care; and

(III) provide a time-line for accomplishing skills.

(B) The CNO in hospitals with 100 or fewer licensed beds and located in counties with a population of less than 50,000, or in hospitals that have been certified by the Centers for Medicare and Medicaid Services as critical access hospitals in accordance with the Code of Federal Regulations, Title 42, Volume 3, Part 485, Subpart F, §485.606(b), shall be exempted from the requirements in subparagraph (A)(i) - (iv) of this paragraph.

(C) The CNO shall be responsible for the operation of the services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(D) The CNO shall report directly to the individual who has authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing board.

(E) The CNO shall participate with leadership from the governing body, medical staff, and clinical areas, in planning, promoting and conducting performance improvement activities.

(2) Staffing and delivery of care.

(A) The nursing services shall adopt, implement and enforce a procedure to verify that hospital nursing personnel for whom licensure is required have valid and current licensure.

(B) There shall be adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed.

(C) There shall be supervisory and staff personnel for each department or nursing unit to provide, when needed, the immediate availability of an RN to provide care for any patient.

(D) An RN shall be on duty in each building of a licensed hospital that contains at least one nursing unit where patients are present. The RN shall supervise and evaluate the nursing care for each patient and assign the nursing care to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(E) The nursing staff shall develop and keep current a nursing plan of care for each patient which addresses the patient's needs.

(F) The hospital shall establish a nurse staffing committee as a standing committee of the hospital. The committee shall be established in accordance with Health and Safety Code (HSC), §§161.031 - 161.033, to be responsible for soliciting and receiving input from nurses on the development, ongoing monitoring, and evaluation of the staffing plan. As provided by HSC, §161.032, the hospital's records and review relating to evaluation of these outcomes and indicators are confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this subparagraph.

(i) The committee shall be composed of:

(I) at least 60% registered nurses who are involved in direct patient care at least 50% of their work time and

selected by their peers who provide direct care during at least 50% of their work time;

(II) at least one representative from either infection control, quality assessment and performance improvement or risk management;

(III) members who are representative of the types of nursing services provided at the hospital; and

(IV) the chief nursing officer of the hospital who is a voting member.

(ii) Participation on the committee by a hospital employee as a committee member shall be part of the employee's work time and the hospital shall compensate that member for that time accordingly. The hospital shall relieve the committee member of other work duties during committee meetings.

(iii) The committee shall meet at least quarterly.

(iv) The responsibilities of the committee shall be to:

(I) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of subparagraph (G) of this paragraph;

(II) review, assess and respond to staffing concerns expressed to the committee;

(III) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(IV) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(V) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(G) The hospital shall adopt, implement and enforce a written official nurse services staffing plan. As used in this subsection, "patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

(i) The official nurse services staffing plan and policies shall:

(I) require significant consideration to be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(II) be based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(III) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(IV) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(V) protect from retaliation nurses who provide input to the nurse staffing committee; and

(VI) comply with subsection (o) of this section.

(ii) The plan shall:

(I) set minimum staffing levels for patient care units that are:

(-a-) based on multiple nurse and patient considerations including:

(-1-) patient characteristics and number of patients for whom care is being provided, including number of admissions, discharges and transfers on a unit;

(-2-) intensity of patient care being provided and variability of patient care across a nursing unit;

(-3-) scope of services provided;

(-4-) context within which care is provided, including architecture and geography of the environment, and the availability of technology; and

(-5-) nursing staff characteristics, including staff consistency and tenure, preparation and experience, and the number and competencies of clinical and non-clinical support staff the nurse must collaborate with or supervise.

(-b-) determined by the nursing assessment and in accordance with evidence-based safe nursing standards; and

(-c-) recalculated at least annually, or as necessary;

(II) include a method for adjusting the staffing plan shift to shift for each patient care unit based on factors, such as, the intensity of patient care to provide staffing flexibility to meet patient needs;

(III) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources;

(IV) include how on-call time will be used;

(V) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations and should be developed based upon a review of the codes of ethics developed by the nursing profession through national nursing organizations;

(VI) include a mechanism for evaluating the effectiveness of the official nurse services staffing plan based on patient needs, nursing sensitive quality indicators, nurse satisfaction measures collected by the hospital and evidence based nurse staffing standards. At least one from each of the following three types of outcomes shall be correlated to the adequacy of staffing:

(-a-) nurse-sensitive patient outcomes selected by the nurse staffing committee, such as, patient falls, adverse drug events, injuries to patients, skin breakdown, pneumonia, infection rates, upper gastrointestinal bleeding, shock, cardiac arrest, length of stay, or patient readmissions;

(-b-) operational outcomes, such as, work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, or overtime rates; and

(-c-) substantiated patient complaints related to staffing levels;

(VII) incorporate a process that facilitates the timely and effective identification of concerns about the adequacy of the staffing plan by the nurse staffing committee established pursuant to subparagraph (F) of this paragraph. This process shall include:

(-a-) a prohibition on retaliation for reporting concerns;

(-b-) a requirement that nurses report concerns timely through appropriate channels within the hospital;

(-c-) orientation of nurses on how to report concerns and to whom;

(-d-) encouraging nurses to provide input to the committee relating to nurse staffing concerns;
(-e-) review, assessment, and response by the committee to staffing concerns expressed to the committee;
(-f-) a process for providing feedback during the committee meeting on how concerns are addressed by the committee established under subparagraph (F) of this paragraph; and
(-g-) use of the nurse safe harbor peer review process pursuant to Occupations Code, §303.005;

(VIII) include policies and procedures that require:

(-a-) orientation of nurses and other personnel who provide nursing care to all patient care units to which they are assigned on either a temporary or permanent basis;

(-b-) that the orientation of nurses and other personnel and the competency to perform nursing services is documented in accordance with hospital policy;

(-c-) that nursing assignments be congruent with documented competency; and

(IX) be used by the hospital as a component in setting the nurse staffing budget and guiding the hospital in assigning nurses hospital wide.

(iii) The hospital shall make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

(iv) There shall be a semiannual evaluation by the staffing committee of the effectiveness of the official nurse services staffing plan and variations between the staffing plan and actual staffing. The evaluation shall consider the outcomes and nursing-sensitive indicators as set out in clause (ii)(VI) of this subparagraph, patient needs, nurse satisfaction measures collected by the hospital, and evidence based nurse staffing standards. This evaluation shall be documented in the minutes of the committee established under subparagraph (F) of this paragraph and presented to the hospital's governing body. Hospitals may determine whether this evaluation is done on a unit or facility level basis. To assist the committee with the semiannual evaluation, the hospital shall report to the committee the variations between the staffing plan and actual staffing. This report of variations shall be confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release.

(v) The staffing plan shall be retained for a period of two years.

(H) Nonemployee licensed nurses who are working in the hospital shall adhere to the policies and procedures of the hospital. The CNO shall provide for the adequate orientation, supervision, and evaluation of the clinical activities of nonemployee nursing personnel which occur within the responsibility of the nursing services.

(I) The hospital shall annually report to the department on:

(i) whether the hospital's governing body has adopted a nurse staffing policy;

(ii) whether the hospital has established a nurse staffing committee that meets the membership requirements of subparagraph (F) of this paragraph;

(iii) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan and has reported the results of the evaluation to the hospital's governing body; and

(iv) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(3) Mandatory overtime. The hospital shall adopt, implement and enforce policies on use of mandatory overtime.

(A) As used in this subsection:

(i) "on-call time" means time spent by a nurse who is not working but who is compensated for availability; and

(ii) "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. Mandatory overtime does not include prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety.

(B) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(C) This section does not prohibit a nurse from volunteering to work overtime.

(D) A hospital may not use on-call time as a substitute for mandatory overtime.

(E) The prohibitions on mandatory overtime do not apply if:

(i) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(ii) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(iii) there is an emergency or unforeseen event of a kind that:

(I) does not regularly occur;

(II) increases the need for health care personnel at the hospital to provide safe patient care; and

(III) could not prudently be anticipated by the hospital; or

(iv) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient. The nurse staffing committee shall ensure that scheduling a nurse for a procedure that could be anticipated to require the nurse to stay beyond the end of his or her scheduled shift does not constitute mandatory overtime.

(F) If a hospital determines that an exception exists under subparagraph (E) of this paragraph, the hospital shall, to the extent possible, make and document a good faith effort to meet the staffing need through voluntary overtime, including calling per diem and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

(G) A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

(4) Drugs and biologicals. Drugs and biologicals shall be prepared and administered in accordance with federal and state laws, the orders of the individuals granted privileges by the medical staff, and accepted standards of practice.

(A) All drugs and biologicals shall be administered by, or under supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing rules, and in accordance with the approved medical staff policies and procedures.

(B) All orders for drugs and biologicals shall be in writing, dated, timed, and signed by the individual responsible for the care of the patient as specified under subsection (f)(6)(A) of this section. When telephone or verbal orders must be used, they shall be:

(i) accepted only by personnel who are authorized to do so by the medical staff policies and procedures, consistent with federal and state laws;

(ii) dated, timed, and authenticated within 48 hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders; and

(iii) used infrequently.

(C) There shall be a hospital procedure for immediately reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs to the attending physician and, if appropriate, to the hospital-wide quality assessment and performance improvement program.

(5) Blood transfusions.

(A) Transfusions shall be prescribed in accordance with hospital policy and administered in accordance with a written protocol for the administration of blood and blood components and the use of infusion devices and ancillary equipment.

(B) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to written, adopted, implemented and enforced hospital policy.

(C) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(D) The patient must be observed during the transfusion and for an appropriate time thereafter for suspected adverse reactions.

(E) Pretransfusion and posttransfusion vital signs shall be recorded.

(F) When warming of blood is indicated, this shall be accomplished during its passage through the transfusion set. The warming system shall be equipped with a visible thermometer and may have an audible warning system. Blood shall not be warmed above 42 degrees Celsius.

(G) Drugs or medications, including those intended for intravenous use, shall not be added to blood or blood components. A 0.9% sodium chloride injection, United States Pharmacopeia, may be added to blood or blood components. Other solutions intended for intravenous use may be used in an administration set or added to blood or blood components under either of the following conditions:

(i) they have been approved for this use by the Federal Drug Administration; or

(ii) there is documentation available to show that addition to the component involved is safe and efficacious.

(H) There shall be a system for detection, reporting and evaluation of suspected complications of transfusion. Any adverse event experienced by a patient in association with a transfusion is to be regarded as a suspected transfusion complication. In the event of a suspected transfusion complication, the personnel attending the patient shall notify immediately a responsible physician and the transfusion service and document the complication in the patient's medical record. All suspected transfusion complications shall be evaluated promptly according to an established procedure.

(I) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(6) Reporting and peer review of a vocational or registered nurse. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Occupations Code §§301.401 - 301.403, 301.405 and Chapter 303 (relating to Grounds for Reporting Nurse, Duty of Nurse to Report, Duty of Peer Review Committee to Report, Duty of Person Employing Nurse to Report, and Nursing Peer Review respectively), and with the rules adopted by the Board of Nurse Examiners in 22 TAC §217.16 (relating to Minor Incidents), §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections), and §217.20 (relating to Safe Harbor Peer Review for Nurses and Whistleblower Protections).

(7) Policies and procedures related to workplace safety.

(A) The hospital shall adopt, implement and enforce policies and procedures related to the work environment for nurses which:

(i) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(ii) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(B) The policies and procedures adopted under subparagraph (A) of this paragraph, at a minimum, must include:

(i) evaluating new products and technology that incorporate ergonomic principles;

(ii) educating nurses in the application of ergonomic practices;

(iii) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(iv) controlling access to those areas identified as having a high risk of violence; and

(v) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

(8) Safe patient handling and movement practices.

(A) The hospital shall adopt, implement and enforce policies and procedures to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient.

(B) The policies and procedures shall establish a process that, at a minimum, includes the following:

(i) analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the hospital and the physical environment in which patient handling and movement occurs;

(ii) education of nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(iii) evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(iv) restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(v) collaboration with and annual report to the nurse staffing committee;

(vi) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(vii) submission of an annual report to the governing body on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(viii) development of architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, with consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(p) Outpatient services. If the hospital provides outpatient services, the services shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Organization. Outpatient services shall be appropriately organized and integrated with inpatient services.

(2) Personnel.

(A) The hospital shall assign an individual to be responsible for outpatient services.

(B) The hospital shall have appropriate physicians on staff and other professional and nonprofessional personnel available.

(q) Pharmacy services. The hospital shall provide pharmaceutical services that meet the needs of the patients.

(1) Compliance. The hospital shall provide a pharmacy which is licensed, as required, by the Texas State Board of Pharmacy. Pharmacy services shall comply with all applicable statutes and rules.

(2) Organization. The hospital shall have a pharmacy directed by a licensed pharmacist.

(3) Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical services.

(4) Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

(A) Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

(B) The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

(i) The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

(ii) Employees shall provide pharmaceutical services within the scope of their license and education.

(C) Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

(D) Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

(E) There shall be adequate controls over all drugs and medications including the floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

(F) Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

(G) There shall be a drug recall procedure.

(H) A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(i) Direction of pharmaceutical services may not require on-premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

(ii) A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

(i) There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

(ii) Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

(iii) The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

(A) All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

(B) All drugs and biologicals shall be kept in a secure area, and locked when appropriate.

(i) A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

(ii) Drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be kept locked within a secure area.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

(i) There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

(ii) Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

(i) Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

(ii) A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

(iii) A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the hospital-wide quality assessment and performance improvement program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate.

(H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(i) A pharmacist shall be readily accessible by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

(ii) There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(r) Quality assessment and performance improvement. The governing body shall ensure that there is an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care.

(1) Program scope. The hospital-wide QAPI program shall reflect the complexity of the hospital's organization and services and have a written plan of implementation. The program must include an ongoing program that shows measurable improvements in the indicators for which there is evidence that they will improve health outcomes, and identify and reduce medical errors.

(A) All hospital departments and services, including services furnished under contract or arrangement shall be evaluated.

(B) Health care associated infections shall be evaluated.

(C) Medication therapy shall be evaluated.

(D) All medical and surgical services performed in the hospital shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(E) The program must measure, analyze and track quality indicators, including adverse patients' events, and other aspects of performance that assess processes of care, hospital services and operations.

(F) Data collected must be used to monitor the effectiveness and safety of service and quality of care, and to identify opportunities for changes that will lead to improvement.

(G) Priorities must be established for performance improvement activities that focus on high-risk, high-volume, or problem-prone areas, taking into consideration the incidence, prevalence and severity of problems in those areas, and how health outcomes and quality of care may be affected.

(H) Performance improvement activities which affect patient safety, including analysis of medical errors and adverse patient events, must be established, and preventive actions implemented.

(I) Success of actions implemented as a result of performance improvement activities must be measured, and ongoing performance must be tracked to ensure improvements are sustained.

(2) Responsibility and accountability. The hospital's governing body, medical staff and administrative staff are responsible and accountable for ensuring that:

(A) an ongoing program for quality improvement is defined, implemented and maintained, and that program requirements are met;

(B) an ongoing program for patient safety, including reduction of medical errors, is defined, implemented and maintained;

(C) the hospital-wide QAPI efforts address priorities for improved quality of care and patient safety, and that all improvement actions are evaluated; and

(D) adequate resources are allocated for measuring, assessing, improving and sustaining the hospital's resources, and for reducing risk to patients.

(3) Medically-related patient care services. The hospital shall have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients. The hospital also shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are

being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(4) Implementation. The hospital must take actions aimed at performance improvement and, after implementing those actions, the hospital must measure its success, and track performance to ensure that improvements are sustained.

(s) Radiology services. The hospital shall maintain, or have available, diagnostic radiologic services according to needs of the patients. All radiology equipment, including X-ray equipment, mammography equipment and laser equipment, shall be licensed and registered as required under Chapter 289 of this title (relating to Radiation Control). If therapeutic services are also provided, the services, as well as the diagnostic services, shall meet professionally approved standards for safety and personnel qualifications as required in §§289.227, 289.229, 289.230 and 289.231 of this title (relating to Registration Regulations). In a special hospital, portable X-ray equipment may be acceptable as a minimum requirement.

(1) Policies and procedures. Policies and procedures shall be adopted, implemented and enforced which will describe the radiology services provided in the hospital and how employee and patient safety will be maintained.

(2) Safety for patients and personnel. The radiology services, particularly ionizing radiology procedures, shall minimize hazards to patients and personnel.

(A) Proper safety precautions shall be maintained against radiation hazards. This includes adequate radiation shielding, safety procedures and equipment maintenance and testing.

(B) Inspection of equipment shall be made by or under the supervision of a licensed medical physicist in accordance with §289.227(o) of this title (relating to Use of Radiation Machines in the Healing Arts). Defective equipment shall be promptly repaired or replaced.

(C) Radiation workers shall be provided personnel monitoring dosimeters to measure the amount of radiation exposure they receive. Exposure reports and documentation shall be available for review.

(D) Radiology services shall be provided only on the order of individuals granted privileges by the medical staff.

(3) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this

section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(4) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(t) Renal dialysis services.

(1) Hospitals may provide inpatient dialysis services without an additional license under HSC Chapter 251. Hospitals providing outpatient dialysis services shall be licensed under HSC Chapter 251.

(2) Hospitals may provide outpatient dialysis services when the governor or the president of the United States declares a disaster in this state or another state. The hospital may provide outpatient dialysis only during the term of the disaster declaration.

(3) Equipment.

(A) Maintenance and repair. All equipment used by a facility, including backup equipment, shall be operated within manufacturer's specifications, and maintained free of defects which could be a potential hazard to patients, staff, or visitors. Maintenance and repair of all equipment shall be performed by qualified staff or contract personnel.

(i) Staff shall be able to identify malfunctioning equipment and report such equipment to the appropriate staff for immediate repair.

(ii) Medical equipment that malfunctions must be clearly labeled and immediately removed from service until the malfunction is identified and corrected.

(iii) Written evidence of all maintenance and repairs shall be maintained.

(iv) After repairs or alterations are made to any equipment or system, the equipment or system shall be thoroughly tested for proper operation before returning to service. This testing must be documented.

(v) A facility shall comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (USC), §360i(b), concerning reporting when a medical device as defined in 21 USC §321(h) has or may have caused or contributed to the injury or death of a patient of the facility.

(B) Preventive maintenance. A facility shall develop, implement and enforce a written preventive maintenance program to ensure patient care related equipment used in a facility receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently as recommended by the manufacturer. The preventive maintenance may be provided by facility staff or by contract.

(C) Backup machine. At least one complete dialysis machine shall be available on site as backup for every ten dialysis machines in use. At least one of these backup machines must be completely operational during hours of treatment. Machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey.

(D) Pediatric patients. If pediatric patients are treated, a facility shall use equipment and supplies, to include blood pressure cuffs, dialyzers, and blood tubing, appropriate for this special population.

(E) Emergency equipment and supplies. A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(i) At a minimum, the emergency equipment and supplies shall include the following:

- (I) oxygen;
- (II) mechanical ventilatory assistance equipment, to include airways, manual breathing bag, and mask;
- (III) suction equipment;
- (IV) supplies specified by the medical director;
- (V) electrocardiograph; and
- (VI) automated external defibrillator or defibrillator.

(ii) If pediatric patients are treated, the facility shall have the appropriate type and size emergency equipment and supplies listed in clause (i) of this subparagraph for this special population.

(iii) A facility shall establish, implement, and enforce a policy for the periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.

(F) Transducer protector. A transducer protector shall be replaced when wetted during a dialysis treatment and shall be used for one treatment only.

(4) Water treatment and dialysate concentrates.

(A) Compliance required. A facility shall meet the requirements of this section. A facility may follow more stringent requirements than the minimum standards required by this section.

(i) The facility administrator and medical director shall each demonstrate responsibility for the water treatment and dialysate supply systems to protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminants that may be found in improperly prepared dialysate, to ensure that the dialysate is correctly formulated and meets the requirements of all applicable quality standards.

(ii) The facility administrator and medical director must assure that policies and procedures related to water treatment and dialysate are understandable and accessible to the operator(s) and that the training program includes quality testing, risks and hazards of improperly prepared concentrate and bacterial issues.

(iii) The facility administrator and medical director must be informed prior to any alteration of, or any device being added to, the water system.

(B) Water treatment. These requirements apply to water intended for use in the delivery of hemodialysis, including the preparation of concentrates from powder at a dialysis facility and dialysate.

(i) The design for the water treatment system in a facility shall be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(ii) When a public water system supply is not used by a facility, the source water shall be tested by the facility at monthly intervals in the same manner as a public water system as described in 30 TAC §290.104 (relating to Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels), and §290.109 (relating to Microbial Con-

taminants) as adopted by the Texas Commission on Environmental Quality (TCEQ).

(iii) The physical space in which the water treatment system is located must be adequate to allow for maintenance, testing, and repair of equipment. If mixing of dialysate is performed in the same area, the physical space must also be adequate to house and allow for the maintenance, testing, and repair of the mixing equipment and for performing the mixing procedure.

(iv) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described in §4.2.1 (concerning Water Bacteriology) and §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI). All documents published by the AAMI as referenced in this section may be obtained by writing the following address: 1110 North Glebe Road, Suite 220, Arlington, Virginia 22201.

(v) Written policies and procedures for the operation of the water treatment system must be developed and implemented. Parameters for the operation of each component of the water treatment system must be developed in writing and known to the operator. Each major water system component shall be labeled in a manner that identifies the device; describes its function, how performance is verified and actions to take in the event performance is not within an acceptable range.

(vi) The materials of any components of water treatment systems (including piping, storage, filters and distribution systems) that contact the purified water shall not interact chemically or physically so as to affect the purity or quality of the product water adversely. Such components shall be fabricated from unreactive materials (e.g. plastics) or appropriate stainless steel. The use of materials that are known to cause toxicity in hemodialysis, such as copper, brass, galvanized material, or aluminum, is prohibited.

(vii) Chemicals infused into the water such as iodine, acid, flocculants, and complexing agents shall be shown to be nondialyzable or shall be adequately removed from product water. Monitors or specific test procedures to verify removal of additives shall be provided and documented.

(viii) Each water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks in series. If the source water is from a private supply which does not use chlorine/chloramine, the water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of one carbon tank.

(I) Reverse osmosis membranes. Reverse osmosis membranes, if used, shall meet the standards in §4.3.7 (concerning Reverse Osmosis) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the AAMI.

(II) Deionization systems.

(-a-) Deionization systems, if used, shall be monitored continuously to produce water of one megohm-centimeter (cm) or greater specific resistivity (or conductivity of one microsiemen/cm or less) at 25 degrees Celsius. An audible and visual alarm shall be activated when the product water resistivity falls below this level and the product water stream shall be prevented from reaching any point of use.

(-b-) Patients shall not be dialyzed on deionized water with a resistivity less than 1.0 megohm-cm measured at the output of the deionizer.

(-c-) A minimum of two deionization (DI) tanks in series shall be used with resistivity monitors including audible and visual alarms placed pre and post the final DI tank in the system. The alarms must be audible in the patient care area.

(-d-) Feed water for deionization systems shall be pretreated with activated carbon adsorption, or a comparable alternative, to prevent nitrosamine formation.

(-e-) If a deionization system is the last process in a water treatment system, it shall be followed by an ultrafilter or other bacteria and endotoxin reducing device.

(III) Carbon tanks.

(-a-) The carbon tanks must contain acid washed carbon, 30-mesh or smaller with a minimum iodine number of 900.

(-b-) A minimum of two carbon adsorption beds shall be installed in a series configuration.

(-c-) The total empty bed contact time (EBCT) shall be at least ten minutes, with the final tank providing at least five minutes EBCT. Carbon adsorption systems used to prepare water for portable dialysis systems are exempt from the requirement for the second carbon and a ten minute EBCT if removal of chloramines to below 0.1 milligram (mg)/l is verified before each treatment.

(-d-) A means shall be provided to sample the product water immediately prior to the final bed(s). Water from this port(s) must be tested for chlorine/chloramine levels immediately prior to each patient shift.

(-e-) All samples for chlorine/chloramine testing must be drawn when the water treatment system has been operating for at least 15 minutes.

(-f-) Tests for total chlorine, which include both free and combined forms of chlorine, may be used as a single analysis with the maximum allowable concentration of 0.1 mg/liter (L). Test results of greater than 0.5 parts per million (ppm) for chlorine or 0.1 ppm for chloramine from the port between the initial tank(s) and final tank(s) shall require testing to be performed at the final exit and replacement of the initial tank(s).

(-g-) In a system without a holding tank, if test results at the exit of the final tank(s) are greater than the parameters for chlorine or chloramine described in this subclause, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine/chloramine and the medical director shall be notified. In systems with holding tanks, if the holding tank tests <1mg/L for total chlorine, the reverse osmosis (RO) may be turned off and the product water in the holding tank may be used to finish treatments in process. The medical director shall be notified.

(-h-) If means other than granulated carbon are used to remove chlorine/chloramine, the facility's governing body must approve such use in writing after review of the safety of the intended method for use in hemodialysis applications. If such methods include the use of additives, there must be evidence the product water does not contain unsafe levels of these additives.

(ix) Water softeners, if used, shall be tested at the end of the treatment day to verify their capacity to treat a sufficient volume of water to supply the facility for the entire treatment day and shall be fitted with a mechanism to prevent water containing the high concentrations of sodium chloride used during regeneration from entering the product water line during regeneration.

(x) If used, the face(s) of timer(s) used to control any component of the water treatment or dialysate delivery system shall

be visible to the operator at all times. Written evidence that timers are checked for operation and accuracy each day of operation must be maintained.

(xi) Filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(xii) Ultrafilters, or other bacterial reducing filters, if used, shall be fitted with pressure gauges on the inlet and outlet water lines to monitor the pressure drop across the membrane. Ultrafilters shall be included in routine disinfection procedures.

(xiii) If used, storage tanks shall have a conical or bowl shaped base and shall drain from the lowest point of the base. Storage tanks shall have a tight-fitting lid and be vented through a hydrophobic 0.2 micron air filter. Means shall be provided to effectively disinfect any storage tank installed in a water distribution system.

(xiv) Ultraviolet (UV) lights, if used, shall be monitored at the frequency recommended by the manufacturer. A log sheet shall be used to record monitoring.

(xv) Water treatment system piping shall be labeled to indicate the contents of the pipe and direction of flow.

(xvi) The water treatment system must be continuously monitored during patient treatment and be guarded by audible and visual alarms which can be seen and heard in the dialysis treatment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located as the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the quality of the product water as measured by this device shall be located after the sensing cell.

(xvii) When deionization tanks do not follow a reverse osmosis system, parameters for the rejection rate of the membranes must assure that the lowest rate accepted would provide product water in compliance with §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition published by the AAMI.

(xviii) A facility shall maintain written logs of the operation of the water treatment system for each treatment day. The log book shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(xix) Microbiological testing of product water shall be conducted.

(I) Frequency. Microbiological testing shall be conducted monthly and following any repair or change to the water treatment system. For a newly installed water distribution system, or when a change has been made to an existing system, weekly testing shall be conducted for one month to verify that bacteria and endotoxin levels are consistently within the allowed limits.

(II) Sample sites. At a minimum, sample sites chosen for the testing shall include the beginning of the distribution piping, at any site of dialysate mixing, and the end of the distribution piping.

(III) Technique. Samples shall be collected immediately before sanitization/disinfection of the water treatment system and dialysis machines. Water testing results shall be routinely trended and reviewed by the medical director in order to determine if results seem questionable or if there is an opportunity for improvement.

The medical director shall determine if there is a need for retesting. Repeated results of "no growth" shall be validated via an outside laboratory. A calibrated loop may not be used in microbiological testing of water samples. Colonies shall be counted using a magnifying device.

(IV) Expected results. Product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use, shall contain a total viable microbial count less than 200 colony forming units (CFU)/millimeter (ml) and an endotoxin concentration less than 2 endotoxin units (EU)/ml. The action level for the total viable microbial count in the product water shall be 50 CFU/ml and the action level for the endotoxin concentration shall be 1 EU/ml.

(V) Required action for unacceptable results. If the action levels described at subclause (IV) of this clause are observed in the product water, corrective measures shall be taken promptly to reduce the levels into an acceptable range.

(VI) Records. All bacteria and endotoxin results shall be recorded on a log sheet in order to identify trends that may indicate the need for corrective action.

(xx) If ozone generators are used to disinfect any portion of the water or dialysate delivery system, testing based on the manufacturer's direction shall be used to measure the ozone concentration each time disinfection is performed, to include testing for safe levels of residual ozone at the end of the disinfection cycle. Testing for ozone in the ambient air shall be conducted on a periodic basis as recommended by the manufacturer. Records of all testing must be maintained in a log.

(xxi) If used, hot water disinfection systems shall be monitored for temperature and time of exposure to hot water as specified by the manufacturer. Temperature of the water shall be recorded at a point furthest from the water heater, where the lowest water temperature is likely to occur. The water temperature shall be measured each time a disinfection cycle is performed. A record that verifies successful completion of the heat disinfection shall be maintained.

(xxii) After chemical disinfection, means shall be provided to restore the equipment and the system in which it is installed to a safe condition relative to residual disinfectant prior to the product water being used for dialysis applications.

(xxiii) Samples of product water must be submitted for chemical analysis every six months and must demonstrate that the quality of the product water used to prepare dialysate or concentrates from powder, meets §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the AAMI.

(I) Samples for chemical analysis shall be collected at the end of the water treatment components and at the most distal point in each water distribution loop, if applicable. All other outlets from the distribution loops shall be inspected to ensure that the outlets are fabricated from compatible materials. Appropriate containers and pH adjustments shall be used to ensure accurate determinations. New facilities or facilities that add or change the configuration of the water distribution system must draw samples at the most distal point for each water distribution loop, if applicable, on a one time basis.

(II) Additional chemical analysis shall be submitted if substantial changes are made to the water treatment system or if the percent rejection of a reverse osmosis system decreased 5.0% or more from the percent rejection measured at the time the water sample for the preceding chemical analysis was taken.

(xxiv) Facility records must include all test results and evidence that the medical director has reviewed the results of the water quality testing and directed corrective action when indicated.

(xxv) Only persons qualified by the education or experience may operate, repair, or replace components of the water treatment system.

(C) Dialysate.

(i) Quality control procedures shall be established to ensure ongoing conformance to policies and procedures regarding dialysate quality.

(ii) Each facility shall set all hemodialysis machines to use only one family of concentrates. When new machines are put into service or the concentrate family or concentrate manufacturer is changed, samples shall be sent to a laboratory for verification.

(iii) Prior to each patient treatment, staff shall verify the dialysate conductivity and pH of each machine with an independent device.

(iv) Bacteriological testing shall be conducted.

(I) Frequency. Responsible facility staff shall develop a schedule to ensure each hemodialysis machine is tested quarterly for bacterial growth and the presence of endotoxins. Hemodialysis machines of home patients shall be cultured monthly until results not exceeding 200 CFU/ml are obtained for three consecutive months, then quarterly samples shall be cultured.

(II) Acceptable limits. Dialysate shall contain less than 200 CFU/ml and an endotoxin concentration of less than 2 EU/ml. The action level for total viable microbial count shall be 50 CFU/ml and the action level for endotoxin concentration shall be 1 EU/ml.

(III) Action to be taken. Disinfection and retesting shall be done when bacterial or endotoxin counts exceed the action levels. Additional samples shall be collected when there is a clinical indication of a pyrogenic reaction and/or septicemia.

(v) Only a licensed nurse may use an additive to increase concentrations of specific electrolytes in the acid concentrate. Mixing procedures shall be followed as specified by the additive manufacturer. When additives are prescribed for a specific patient, the container holding the prescribed acid concentrate shall be labeled with the name of the patient, the final concentration of the added electrolyte, the date the prescribed concentrate was made, and the name of the person who mixed the additive.

(vi) All components used in concentrate preparation systems (including mixing and storage tanks, pumps, valves and piping) shall be fabricated from materials (e.g., plastics or appropriate stainless steel) that do not interact chemically or physically with the concentrate so as to affect its purity, or with the germicides used to disinfect the equipment. The use of materials that are known to cause toxicity in hemodialysis such as copper, brass, galvanized material and aluminum is prohibited.

(vii) Facility policies shall address means to protect stored acid concentrates from tampering or from degeneration due to exposure to extreme heat or cold.

(viii) Procedures to control the transfer of acid concentrates from the delivery container to the storage tank and prevent the inadvertent mixing of different concentrate formulations shall be developed, implemented and enforced. The storage tanks shall be clearly labeled.

(ix) Concentrate mixing systems shall include a purified water source, a suitable drain, and a ground fault protected electrical outlet.

(I) Operators of mixing systems shall use personal protective equipment as specified by the manufacturer during all mixing processes.

(II) The manufacturer's instructions for use of a concentrate mixing system shall be followed, including instructions for mixing the powder with the correct amount of water. The number of bags or weight of powder added shall be determined and recorded.

(III) The mixing tank shall be clearly labeled to indicate the fill and final volumes required to correctly dilute the powder.

(IV) Systems for preparing either bicarbonate or acid concentrate from powder shall be monitored according to the manufacturer's instructions.

(V) Concentrates shall not be used, or transferred to holding tanks or distribution systems, until all tests are completed.

(VI) If a facility designs its own system for mixing concentrates, procedures shall be developed and validated using an independent laboratory to ensure proper mixing.

(x) Acid concentrate mixing tanks shall be designed to allow the inside of the tank to be rinsed when changing concentrate formulas.

(I) Acid mixing systems shall be designed and maintained to prevent rust and corrosion.

(II) Acid concentrate mixing tanks shall be emptied completely and rinsed with product water before mixing another batch of concentrate to prevent cross contamination between different batches.

(III) Acid concentrate mixing equipment shall be disinfected as specified by the equipment manufacturer or in the case where no specifications are given, as defined by facility policy.

(IV) Records of disinfection and rinsing of disinfectants to safe residual levels shall be maintained.

(xi) Bicarbonate concentrate mixing tanks shall have conical or bowl shaped bottoms and shall drain from the lowest point of the base. The tank design shall allow all internal surfaces to be disinfected and rinsed.

(I) Bicarbonate concentrate mixing tanks shall not be prefilled the night before use.

(II) If disinfectant remains in the mixing tank overnight, this solution must be completely drained, the tank rinsed and tested for residual disinfectant prior to preparing the first batch of that day of bicarbonate concentrate.

(III) Unused portions of bicarbonate concentrate shall not be mixed with fresh concentrate.

(IV) At a minimum, bicarbonate distribution systems shall be disinfected weekly. More frequent disinfection shall be done if required by the manufacturer, or if dialysate culture results are above the action level.

(V) If jugs are reused to deliver bicarbonate concentrate to individual hemodialysis machines:

(-a-) jugs shall be emptied of concentrate, rinsed and inverted to drain at the end of each treatment day;

(-b-) at a minimum, jugs shall be disinfected weekly, more frequent disinfection shall be considered by the medical director if dialysate culture results are above the action level; and

(-c-) following disinfection, jugs shall be drained, rinsed free of residual disinfectant, and inverted to dry. Testing for residual disinfectant shall be done and documented.

(xii) All mixing tanks, bulk storage tanks, dispensing tanks and containers for single hemodialysis treatments shall be labeled as to the contents.

(I) Mixing tanks. Prior to batch preparation, a label shall be affixed to the mixing tank that includes the date of preparation and the chemical composition or formulation of the concentrate being prepared. This labeling shall remain on the mixing tank until the tank has been emptied.

(II) Bulk storage/dispensing tanks. These tanks shall be permanently labeled to identify the chemical composition or formulation of their contents.

(III) Single machine containers. At a minimum, single machine containers shall be labeled with sufficient information to differentiate the contents from other concentrate formulations used in the facility and permit positive identification by users of container contents.

(xiii) Permanent records of batches produced shall be maintained to include the concentrate formula produced, the volume of the batch, lot number(s) of powdered concentrate packages, the manufacturer of the powdered concentrate, date and time of mixing, test results, person performing mixing, and expiration date (if applicable).

(xiv) If dialysate concentrates are prepared in the facility, the manufacturers' recommendations shall be followed regarding any preventive maintenance. Records shall be maintained indicating the date, time, person performing the procedure, and the results (if applicable).

(5) Prevention requirements concerning patients.

(A) Hepatitis B vaccination.

(i) With the advice and consent of a patient's attending nephrologist, facility staff shall make the hepatitis B vaccine available to a patient who is susceptible to hepatitis B, provided that the patient has coverage or is willing to pay for vaccination.

(ii) The facility shall make available to patients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Serologic screening of patients.

(i) A patient new to dialysis shall have been screened for hepatitis B surface antigen (HBsAg) within one month before or at the time of admission to the facility or have a known hepatitis B surface antibody (anti-HBs) status of at least 10 milli-international units per milliliter no more than 12 months prior to admission. The facility shall document how this screening requirement is met.

(ii) Repeated serologic screening shall be based on the antigen or antibody status of the patient.

(I) Monthly screening for HBsAg is required for patients whose previous test results are negative for HBsAg.

(II) Screening of HBsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis, provided that the facility's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated

Disease in the United States, 2000, published by the United States Department of Health and Human Services.

(C) Isolation procedures for the HBsAg-positive patient.

(i) The facility shall treat patients positive for HBsAg in a segregated treatment area which includes a hand washing sink, a work area, patient care supplies and equipment, and sufficient space to prevent cross-contamination to other patients.

(ii) A patient who tests positive for HBsAg shall be dialyzed on equipment reserved and maintained for the HBsAg-positive patient's use only.

(iii) When a caregiver is assigned to both HBsAg-negative and HBsAg-positive patients, the HBsAg-negative patients assigned to this grouping must be Hepatitis B antibody positive. Hepatitis B antibody positive patients are to be seated at the treatment stations nearest the isolation station and be assigned to the same staff member who is caring for the HBsAg-positive patient.

(iv) If an HBsAg-positive patient is discharged, the equipment which had been reserved for that patient shall be given intermediate level disinfection prior to use for a patient testing negative for HBsAg.

(v) In the case of patients new to dialysis, if these patients are admitted for treatment before results of HBsAg or anti-HBs testing are known, these patients shall undergo treatment as if the HBsAg test results were potentially positive, except that they shall not be treated in the HBsAg isolation room, area, or machine.

(I) The facility shall treat potentially HBsAg-positive patients in a location in the treatment area which is outside of traffic patterns until the HBsAg test results are known.

(II) The dialysis machine used by this patient shall be given intermediate level disinfection prior to its use by another patient.

(III) The facility shall obtain HBsAg status results of the patient no later than three days from admission.

(u) Respiratory care services. The hospital shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the hospital.

(2) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(3) There shall be a medical director or clinical director of respiratory care services who is a physician with the knowledge, experience, and capabilities to supervise and administer the services properly. The medical director or clinical director may serve on either a full-time or part-time basis.

(4) There shall be adequate numbers of respiratory therapists, respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with the state law.

(5) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(6) If blood gases or other clinical laboratory tests are performed by the respiratory care services staff, the respiratory care staff

shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR, Part 493.

(7) Services shall be provided only on, and in accordance with, the orders of a physician.

(v) Sterilization and sterile supplies.

(1) Supervision. The sterilization of all supplies and equipment shall be under the supervision of a person qualified by education, training and experience. Staff responsible for the sterilization of supplies and equipment shall participate in a documented continuing education program; new employees shall receive initial orientation and on-the-job training.

(2) Equipment and procedures.

(A) Sterilization. Every hospital shall provide equipment adequate for sterilization of supplies and equipment as needed. Equipment shall be maintained and operated to perform, with accuracy, the sterilization of the various materials required.

(B) Written policy. Written policies and procedures for the decontamination and sterilization activities performed shall be adopted, implemented and enforced. Policies shall include the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of reusable items, as well as those for the assembly, wrapping, storage, distribution and quality control of sterile items and equipment. These written policies shall be reviewed at least every other year and approved by the infection control practitioner or committee.

(C) Separation. Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and the policies and procedures for their use, shall be such as to effectively separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment. Hand washing facilities shall be provided and a separate sink shall be provided for safe disposal of liquid waste.

(D) Labeling. All containers for solutions, drugs, flammable solvents, ether, alcohol, and medicated supplies shall be clearly labeled to indicate contents. Those which are sterilized by the hospital shall be labeled so as to be identifiable both before and after sterilization. Sterilized items shall have a load control identification that indicates the sterilizer used, the cycle or load number, and the date of sterilization.

(E) Preparation for sterilization.

(i) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated and prepared in a clean, controlled environment.

(ii) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(F) Packaging. All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized.

(G) External chemical indicators.

(i) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(ii) The indicator results shall be interpreted according to manufacturer's written instructions and indicator reaction specifications.

(iii) A log shall be maintained with the load identification, indicator results, and identification of the contents of the load.

(H) Biological indicators. Biological indicators are commercially-available microorganisms (e.g., United States Food and Drug Administration (FDA) approved strips or vials of *Bacillus* species endospores) which can be used to verify the performance of waste treatment equipment and processes (or sterilization equipment and processes).

(i) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used.

(ii) Biological indicators shall be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low-temperature hydrogen peroxide gas sterilizers, and every load for ethylene oxide (EO) sterilizers.

(iii) Biological indicators shall be included in every load that contains implantable objects.

(iv) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(v) If a test is positive, the sterilizer shall immediately be taken out of service.

(I) Implantable items shall be recalled and reprocessed if a biological indicator test (spore test) is positive.

(II) All available items shall be recalled and reprocessed if a sterilizer malfunction is found and a list of those items not retrieved in the recall shall be submitted to infection control.

(III) A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(I) Sterilizers.

(i) Steam sterilizers (saturated steam under pressure) shall be utilized for sterilization of heat and moisture stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(ii) EO sterilizers shall be used for processing heat and moisture sensitive items. EO sterilizers and aerators shall be used and vented according to the manufacturer's written instructions.

(iii) Flash sterilizers shall be used for emergency sterilization of clean, unwrapped instruments and porous items only.

(J) Disinfection.

(i) Written policies, approved by the infection control committee, shall be adopted, implemented and enforced for the use of chemical disinfectants.

(ii) The manufacturer's written instructions for the use of disinfectants shall be followed.

(iii) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(iv) Disinfectant solutions shall be kept covered and used in well-ventilated areas.

(v) Chemical germicides that are registered with the United States Environmental Protection Agency as "sterilants" may be used either for sterilization or high-level disinfection.

(vi) All staff personnel using chemical disinfectants shall have received training on their use.

(K) Performance records.

(i) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of five years.

(ii) Each sterilizer shall be monitored continuously during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained and shall include:

(I) the sterilizer identification;

(II) sterilization date;

(III) cycle number;

(IV) contents of each load;

(V) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(VI) identification of operator(s);

(VII) results of biological tests and dates performed;

(VIII) time-temperature recording charts from each sterilizer;

(IX) gas concentration and relative humidity (if applicable); and

(X) any other test results.

(L) Storage of sterilized items.

(i) Sterilized items shall be transported so as to maintain cleanliness and sterility and to prevent physical damage.

(ii) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(iii) The hospital shall adopt, implement and enforce a policy which describes the mechanism used to determine the shelf life of sterilized packages.

(M) Preventive maintenance. Preventive maintenance of all sterilizers shall be performed according to individual adopted, implemented and enforced policy on a scheduled basis by qualified personnel, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review.

(w) Surgical services. If a hospital provides surgical services, the services shall be well-organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services shall be consistent in quality with inpatient care in accordance with the complexity of services offered. A special hospital may not offer surgical services.

(1) Organization and staffing. The organization of the surgical services shall be appropriate for the scope of the services offered.

(A) The operating rooms shall be supervised by an experienced RN or physician.

(B) Licensed vocational nurses (LVNs) and surgical technologists (operating room technicians) may serve as scrub nurses or technologists under the supervision of an RN.

(C) Circulating duties in the operating room must be performed by qualified RNs. In accordance with approved medical

staff policies and procedures, LVNs and surgical technologists may assist in circulatory duties under the direct supervision of a qualified RN circulator.

(D) Surgical privileges shall be delineated for all physicians, podiatrists, and dentists performing surgery in accordance with the competencies of each. The surgical services shall maintain a roster specifying the surgical privileges of each.

(E) If the facility employs surgical technologists, the facility shall adopt, implement, and enforce policies and procedures to comply with Health and Safety Code, Chapter 259 (relating to Surgical Technologists at Health Care Facilities).

(2) Delivery of service. Surgical services shall be consistent with needs and resources. Written policies governing surgical care which are designed to ensure the achievement and maintenance of high standards of medical practice and patient care shall be adopted, implemented and enforced.

(A) There shall be a complete medical history and physical examination, as required under subsection (k)(3)(F) of this section, in the medical record of every patient prior to surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's medical record, there shall be a statement to that effect and an admission note in the record by the individual who admitted the patient.

(B) A properly executed informed consent form for the operation shall be in the patient's medical record before surgery, except in emergencies.

(C) The following equipment shall be available in the operating room suites:

- (i) communication system;
- (ii) cardiac monitor;
- (iii) resuscitator;
- (iv) defibrillator;
- (v) aspirator; and
- (vi) tracheotomy set.

(D) There shall be adequate provisions for immediate postoperative care.

(E) The operating room register shall be complete and up-to-date. The register shall contain, but not be limited to, the following:

- (i) patient's name and hospital identification number;
- (ii) date of operation;
- (iii) operation performed;
- (iv) operating surgeon and assistant(s);
- (v) type of anesthesia used and name of person administering it;
- (vi) time operation began and ended;
- (vii) time anesthesia began and ended;
- (viii) disposition of specimens;
- (ix) names of scrub and circulating personnel;
- (x) unusual occurrences; and

(xi) disposition of the patient.

(F) An operative report describing techniques, findings, and tissue removed or altered shall be written or dictated immediately following surgery and signed by the surgeon.

(x) Therapy services. If the hospital provides physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to ensure the health and safety of patients.

(1) Organization and staffing. The organization of the services shall be appropriate to the scope of the services offered.

(A) The director of the services shall have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(B) Physical therapy, occupational therapy, speech therapy, or audiology services, if provided, shall be provided by staff who meet the qualifications specified by the medical staff, consistent with state law.

(2) Delivery of services. Services shall be furnished in accordance with a written plan of treatment. Services to be provided shall be consistent with applicable state laws and regulations, and in accordance with orders of the physician, podiatrist, dentist or other licensed practitioner who is authorized by the medical staff to order the services. Therapy orders shall be incorporated in the patient's medical record.

(y) Waste and waste disposal.

(1) Special waste and liquid/sewage waste management.

(A) The hospital shall comply with the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities) and the TCEQ requirements in 30 TAC §330.1207 (relating to Generators of Medical Waste).

(B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(2) Waste receptacles.

(A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location(s) into closed containers.

(B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(D) Nonreusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301758



CHAPTER 134. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §134.41

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §134.41, psychiatric hospitals, concerning Preadmission Screening and Resident Review (PASRR), without changes to proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1083) and, therefore, the section will not be republished.

The amendment will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. The amendment explicitly adds to the State's regulatory scheme the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization units, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Chapter 17, and the PASRR rule at 40 TAC Chapter 19 has been repealed. Through promulgation of the four rule amendments described in this preamble, the department is

requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

SECTION-BY-SECTION SUMMARY

The four rule amendments to §§133.41, 134.41, 411.482 and 411.628 are nearly identical, and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. Comments were received from the Texas Hospital Association. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations as discussed in the summary of comments.

Comment: The commenter requested a six-month delay in implementation from the rules effective date for all of the agencies involved.

Response: The commission appreciates the comment, but DADS, the agency primarily responsible for administering the federal PASRR Program in Texas, has promulgated new, detailed PASRR Program rules to which other state agencies, including the department, may refer, and any new revisions are outside of the department's control. No change was made as a result of this comment.

Comment: The commenter also submitted comments on the substance of DADS' rules in 40 TAC Chapter 17 as they apply to hospitals under that chapter and to rules in Chapters 133, 134, and 411. The comments/recommendations specifically concerned §17.103, Fair Hearing Process; §17.104, Exceptions to PASRR Level II Evaluations and Determinations; §17.201, Preadmission Screening Process; §17.202, Expedited Admission Process; §17.302, Nursing Facility Responsibilities; and §17.303, Local Authority Responsibilities.

Response: The commission appreciates the comments, but DADS, the agency primarily responsible for administering the federal PASRR Program in Texas, has promulgated new, detailed PASRR Program rules to which other state agencies, including the department, may refer, and any new revisions are outside of the department's control. No change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301759

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 776-6972



CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §411.482 and §411.628, psychiatric hospitals and crisis stabilization units, concerning Preadmission Screening and Resident Review (PASRR), without changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1085) and, therefore, the sections will not be republished.

The amendments will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. The amendments explicitly add to the State's regulatory scheme the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization units, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized services that may benefit the person with a diagnosis of

mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Chapter 17, and the PASARR rule at 40 TAC Chapter 19 has been repealed. Through promulgation of the four rule amendments described in this preamble, the department is requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

SECTION-BY-SECTION SUMMARY

The four rule amendments to §§133.41, 134.41, 411.482 and 411.628 are nearly identical and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. Comments were received from the Texas Hospital Association. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations as discussed in the summary of comments.

Comment: The commenter requested a six-month delay in implementation from the rules effective date for all of the agencies involved.

Response: The commission appreciates the comment, but DADS, the agency primarily responsible for administering the federal PASRR Program in Texas, has promulgated new, detailed PASRR Program rules to which other state agencies, including the department, may refer, and any new revisions are outside of the department's control. No change was made as a result of this comment.

Comment: The commenter also submitted comments on the substance of DADS' rules in 40 TAC Chapter 17 as they apply to hospitals under that chapter and to rules in Chapters 133, 134, and 411. The comments/recommendations specifically concerned §17.103, Fair Hearing Process; §17.104, Exceptions to PASRR Level II Evaluations and Determinations; §17.201, Preadmission Screening Process; §17.202, Expedited Admission Process; §17.302, Nursing Facility Responsibilities; and §17.303, Local Authority Responsibilities.

Response: The commission appreciates the comments, but DADS, the agency primarily responsible for administering the federal PASRR Program in Texas, has promulgated new, detailed PASRR Program rules to which other state agencies, including the department, may refer, and any new revisions are outside of the department's control. No change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER J. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS DIVISION 5. DISCHARGE

25 TAC §411.482

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301760

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 776-6972



SUBCHAPTER M. STANDARDS OF CARE AND TREATMENT IN CRISIS STABILIZATION UNITS

DIVISION 5. DISCHARGE

25 TAC §411.628

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the

proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301761

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 776-6972



CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE

DIVISION 5. DISCHARGE AND ATP FROM SMHF

25 TAC §412.202

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §412.202, concerning the Mental Health Services--Admission, Continuity, and Discharge, with changes to the text as proposed in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1087).

BACKGROUND AND PURPOSE

In accordance with 42 Code of Federal Regulations Part 483, Subpart C, concerning Preadmission Screening and Resident Review (PASRR), the amended section sets forth the requirements for state mental health facilities (SMHFs) and local mental health authorities (LMHAs) to perform PASRR screenings and evaluations of patients who are being considered for nursing home placement upon discharge.

The purpose of PASRR is to ensure that placing the patient in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the PASRR Program, the Department of Aging and Disability Services (DADS), who is designated with the responsibility for administering the PASRR Program in Texas, is promulgating PASRR Program rules with which LMHAs and SMHFs must comply. The department is amending an applicable rule in Chapter 412, Subchapter D, §412.202, concerning admission, continuity, and discharge to require that LMHAs and

SMHFs comply with federal regulations and the rules in 40 TAC Chapter 17, concerning substantially the same matter. DADS' new PASRR rules, which are published in the same issue of the *Texas Register* as the amendment in this preamble and repeal of the department's rules in Chapter 415, Subchapter J, may be found at 40 TAC Chapter 17. The DADS' PASARR rule at 40 TAC Chapter 19, Subchapter Z, has been repealed.

The department rules in Chapter 415, Subchapter J, concerning PASARR are repealed because they are no longer necessary.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 412.202 has been reviewed and the department has determined that the reasons for adopting the rule continue to exist.

SECTION-BY-SECTION SUMMARY

Amendments to §412.202(b) cite the federal PASRR regulations; set forth the basic requirements for LMHAs and SMHFs in the conduct of preadmission screenings, evaluations, and resident reviews; and require compliance with federal regulations and DADS' rules concerning PASRR in 40 TAC Chapter 17. Section 412.202(b)(5) has been deleted because it conflicts with the DADS' rules.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. Comments were received from the MHMR Authority of Brazos Valley of Bryan, Disability Rights Texas, Inc., of Austin, and National Association of Social Workers - Texas Chapter of Austin. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: With regard to §412.202(b)(5), the commenter suggested that these provisions should be the responsibility of the state facility that made the placement, these actions should be taken at a level higher than the LMHA, and this level of involvement could result in conflicts between the LMHA and the local nursing facilities. Further, the commenter offered that qualified mental health professionals (QMHPs) would likely be evaluating appropriate care and indicated that it is unreasonable to expect a QMHP to evaluate appropriate medical care. The commenter expressed concern over the potential for future legal implications resulting from the determination of "appropriate care" and asked whether "appropriate" implied "adequate."

Response: Although the information contained in §412.202 is not new and, therefore, adds no new requirements for LMHAs, the department does recognize that this language has the potential to cause confusion in light of the requirements set forth in the new DADS' PASRR rules in 40 TAC Chapter 17 published in the same issue of the *Texas Register*. Therefore, the department has deleted §412.202(b)(5).

Comment: Concerning the rules in general, a commenter advised that the concerns raised during informal comments appear to have been addressed in the proposed published version.

Response: The department appreciates the commenter's time and effort in responding during the formal comment period.

Comment: A commenter supports the idea of proper placement of individuals but expressed concern over the lack of resources, thereby creating a barrier to care for individuals with mental health diagnoses and medical problems. Further, if individuals are inappropriately placed in nursing facilities when the individual needs mental health or developmental disability treatment that cannot be provided by or arranged by the nursing home, the nursing home will not be paid for the days the individual is in the nursing facility without prior approval for admission. The commenter indicates that the seven-day timeframe for the PASRR screening is insufficient and would result in a revolving door for individuals going from group home placement, where medical needs cannot always be met appropriately, to a hospital, then to a nursing home, and back to a group home.

Response: The amendment to §412.202 does not alter or establish conditions for payment for nursing facility services. The department does not have the statutory authority to regulate or to establish conditions for payment to these entities.

The language referencing the seven-day period in §412.202(b)(5)(A) applies only to individuals who are already placed in a nursing facility, so there is no possibility of such a requirement having an impact either on placement in the nursing facility nor upon hospital discharge since it only applies after both events have occurred. Since there are new DADS' PASRR rules that address this, the department has deleted §412.202(b)(5) to avoid further confusion in the interpretation of this provision.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055(e), and Health and Safety Code, Chapter 35 and §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

§412.202. *Special Considerations.*

(a) Persons admitted to a SMHF three times in 180 days. Persons who are admitted to a SMHF three times in 180 days are considered to be at risk for future admission to inpatient services. Pursuant to the Texas Government Code, §531.0244(b)(4), to prevent the unnecessary placement in an institution, the SMHF and designated LMHA shall:

(1) during discharge planning, review the patient's previous continuing care plans to determine the effectiveness of the clinical and non-clinical services and supports identified, and recommend in the patient's current continuing care plan those services and supports that have been effective and as well as those designed to prevent unnecessary admission to the SMHF;

(2) determine the availability and appropriateness of clinical and non-clinical services and supports in the intensity needed by the patient (i.e., type, amount, scope, and duration) which will prevent unnecessary admission to the SMHF; and

(3) consider appropriateness of the patient's continued stay in the SMHF.

(b) Preadmission Screening and Evaluation (PASRR). As described in 42 Code of Federal Regulations Part 483, Subpart C, all patients who are being considered for nursing home placement shall be screened prior to nursing facility admission. The purpose of the PASRR Level I Screening and PASRR Level II Evaluation is:

(1) to ensure that placement of the patient in a nursing facility is necessary;

(2) to identify alternate placement options when applicable; and

(3) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(A) PASRR Level I Screening. The SMHF shall complete, and may collaborate with a nursing facility, a PASRR Level I Screening in accordance with the rules of the Department of Aging and Disability Services (DADS) set forth in the 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)).

(B) PASRR Level II Evaluation. If the PASRR Level I Screening indicates that the patient might have a mental illness, intellectual disability, or developmental disability, the SMHF shall arrange with LMHA who shall conduct a PASRR Level II Evaluation in accordance with 40 TAC Chapter 17.

(C) Resident Review. The LMHA shall conduct PASRR Level II Evaluations as part of the resident review process required by 40 TAC Chapter 17.

(4) ATP. If a patient is admitted to a nursing facility on ATP, then the designated LMHA shall conduct and document, including justification for its recommendations, the activities described in this paragraph.

(A) The designated LMHA shall make at least one face-to-face contact with the patient at the nursing facility. The contact shall include:

(i) a review of the patient's medical record at the nursing facility; and

(ii) discussions with the patient and LAR, if any, the nursing facility staff, and other staff who provide care to the patient regarding:

(I) the needs of the patient and the care he/she is receiving;

(II) the ability of the nursing facility to provide the appropriate care;

(III) the provision of mental health services, if needed by the patient; and

(IV) the patient's adjustment to the nursing facility.

(B) Before the end of the initial ATP period as described in §412.206(b)(2) of this title (relating to Absence for Trial Placement (ATP)), the designated LMHA shall recommend to the SMHF one of the following:

(i) discharging the patient if the LMHA determines that:

(I) the nursing facility is capable of providing, and willing to provide, appropriate care to the patient after discharge;

(II) any mental health services needed by the patient are being provided to the patient while he/she is residing in the nursing facility; and

(III) the patient and LAR, if any, agrees to the nursing facility placement;

(ii) extending the patient's ATP period in accordance with §412.206(b)(3) of this title;

(iii) returning the patient to the SMHF in accordance with §412.205(b)(2) of this title (relating to Absences From a SMHF); or

(iv) initiating involuntary admission to the SMHF in accordance with §412.205(a)(2) of this title.

(c) Assisted living.

(1) A SMHF or LMHA may not refer a person to an assisted living facility that is not licensed under the Texas Health and Safety Code, Chapter 247.

(2) As required by the Texas Health and Safety Code, §247.063(b), if a SMHF or LMHA gains knowledge of an assisted living facility that is not operated or licensed by TDHS, an LMHA, or TDMHMR, and that has four or more residents who are unrelated to the proprietor of the facility, then the SMHF or LMHA shall report the name, address, and telephone number of the facility to TDHS.

(d) Minors.

(1) To the extent permitted by medical privacy laws, the SMHF and designated LMHA shall make a reasonable effort to involve a minor's LAR or the LAR's designee.

(2) A minor committed to or placed in a SMHF under the Texas Family Code, Chapter 55, Subchapter C or D, shall be discharged in accordance with the Texas Family Code, Chapter 55, Subchapter C or D, as appropriate.

(e) Patients suspected of having mental retardation. If the SMHF suspects a patient has mental retardation, then the SMHF shall notify the designated LMHA liaison staff and the designated MRA. The designated MRA shall assign an MRA liaison staff to the patient to ensure compliance with Chapter 415, Subchapter D of this title (concerning Diagnostic Eligibility for Services and Supports--Mental Retardation Priority Population and Related Conditions).

(f) Criminal Code.

(1) Texas Code of Criminal Procedure (TCCP), Article 46.02 or Chapter 46B: Incompetency to stand trial.

(A) Discharge of a patient committed under TCCP, Article 46.02, §6 (Civil commitment--charges pending) or Article 46B.102 (Commitment Hearing: Mental Illness), shall be in accordance with the TCCP, Article 46.02, §8 (General) or Article 46B.107 (Release of Defendant After Commitment).

(B) Discharge of a patient committed under TCCP, Article 46.02, §5 (Criminal commitment) or Article 46B.073 (Commitment For Restoration to Competency), shall be in accordance with TCCP, Article 46.02, §5 (Criminal commitment) or Article 46B.083 (Report By Facility Head).

(C) For a patient committed under TCCP, Article 46.02 or Chapter 46B, who is discharged and returned to the committing court, the SMHF shall, within 24 hours after discharge, notify the following of the discharge:

(i) the patient's designated LMHA; and

(ii) the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(2) TCCP, Article 46.03: Insanity defense. A person acquitted by reason of insanity and committed to a SMHF under TCCP, Article 46.03, may be discharged only upon order of the committing court in accordance with TCCP, Article 46.03, §4(d)(5) (Disposition following acquittal by reason of insanity) (Judicial release).

(g) Special needs offenders.

(1) Pre-admission assessment after release from county or city jail. If a county or city jail refers a special needs offender (SNO) in the priority population to an LMHA and notifies the LMHA of the referral at least 24 hours prior to the SNO's release from a county or city jail, then the LMHA shall arrange for a face-to-face contact between the SNO and a QMHP-CS to occur within seven days after the SNO's release.

(A) If the SNO is currently receiving LMHA services from the LMHA that is notified of the referral, then at the face-to-face contact the QMHP-CS shall re-assess the SNO and arrange for appropriate services.

(B) If the SNO is not currently receiving LMHA services from the LMHA that is notified of the referral, then at the face-to-face contact the QMHP-CS shall conduct a pre-admission assessment in accordance with §412.315(a) of this title (relating to Assessment and Treatment Planning) and comply with §412.161(b)(2)(A) or (B) of this title (relating to Screening and Assessment), as appropriate.

(C) If the LMHA does not have a face-to-face contact with a SNO, then the LMHA shall document the reasons for not doing so.

(2) Pre-admission assessment after release from state prison or state jail. If an LMHA is notified of the anticipated release from prison or a state jail of a SNO in the priority population who is currently taking psychoactive medication(s) for a mental illness and who will be released with a 10-day supply of the psychoactive medication(s), then the LMHA shall arrange for a face-to-face contact between the SNO and QMHP-CS to occur within seven days after the SNO's release.

(A) At the face-to-face contact, the QMHP-CS shall conduct a pre-admission assessment in accordance with §412.315(a) of this title and comply with §412.161(b)(2)(A) or (B) of this title (as appropriate). If the LMHA determines that the SNO should receive services immediately, then the LMHA must arrange for the SNO to meet with a prescriber of medication before the SNO's entire supply of psychoactive medication has been administered.

(B) If the LMHA does not have a face-to-face contact with the SNO, then the LMHA shall document the reasons for not doing so.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301756

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 776-6972

CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

SUBCHAPTER J. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)--MENTAL HEALTH SERVICES

25 TAC §§415.451 - 415.458

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§415.451 - 415.458, concerning Preadmission Screening and Resident Review (PASARR), without changes to the text as proposed in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1090) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

In accordance with 42 Code of Federal Regulations Part 483, Subpart C, concerning Preadmission Screening and Resident Review (PASRR), the amended section sets forth the requirements for state mental health facilities (SMHFs) and local mental health authorities (LMHAs) to perform PASRR screenings and evaluations of patients who are being considered for nursing home placement upon discharge.

The purpose of PASRR is to ensure that placing the patient in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the PASRR Program, the Department of Aging and Disability Services (DADS), who is designated with the responsibility for administering the PASRR Program in Texas, is promulgating PASRR Program rules with which LMHAs and SMHFs must comply. The department is amending an applicable rule in Chapter 412, Subchapter D, §412.202, concerning admission, continuity, and discharge to require that LMHAs and SMHFs comply with federal regulations and the rules in 40 TAC Chapter 17, concerning substantially the same matter. DADS' new PASRR rules, which are published in the same issue of the *Texas Register* as the repeals in this preamble and the amendment of the department's rule, §412.202, may be found at 40 TAC Chapter 17. The DADS' PASARR rule at 40 TAC Chapter 19, Subchapter Z, has been repealed.

The department rules in Chapter 415, Subchapter J, concerning PASARR are repealed because they are no longer necessary.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.451 - 415.458 have been reviewed and are no longer necessary. The rules have been repealed.

SECTION-BY-SECTION SUMMARY

Sections 415.451 - 415.458 concerning PASARR have been repealed because the PASRR Program requirements are addressed in new DADS' rules in 40 TAC Chapter 17.

COMMENTS

The department, on behalf of the commission, did not receive any comments concerning the repeals during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055(e), and Health and Safety Code, Chapter 35 and §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2013.

TRD-201301757

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 776-6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS

28 TAC §§7.201 - 7.205, 7.209 - 7.214

The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214, concerning insurance holding company systems. The amendments and new sections are adopted with changes to the proposed text published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10100 and 10264) and will be republished.

The amendments primarily adopt changes relating to form filings, definitions, registration of insurers, transactions subject to prior notice, acquisition or divestiture statements filing requirements, and Forms A - F; and non-substantive changes to conform to current agency writing style. A public hearing was held to consider the proposed rules on January 24, 2013, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas. The public comment period closed on January 28, 2013, and the department received three comments. In

conjunction with these adopted amendments and new sections, the adopted repeal of §§7.211 - 7.213 is also published in this issue of the *Texas Register*.

In accord with Government Code §2001.033(a)(1), the department's reasoned justification for these rules is set out in this order, which includes the preamble and rules. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of the groups and associations that commented and whether they were in support of or in opposition to adopting the rules, the reasons why the department agrees or disagrees with some of the comments and recommendations, and all other department responses to the comments.

REASONED JUSTIFICATION. The amendments and new sections are necessary to implement statutory changes from SB 1283 and SB 1284 (79th Legislature, 2005), SB 1542 (80th Legislature, 2007), and SB 1431 (82nd Legislature, 2011), and to conform the rules to the National Association of Insurance Commissioners (NAIC) model regulations, as applicable. Insurance companies and health maintenance organizations (HMOs) are subject to the Texas Insurance Holding Company Systems Act, which is codified in Insurance Code Chapter 823 (Act). The adopted amendments and new sections update the law relating to the functions of insurance holding company systems in response to lessons learned following the nation's recent financial crisis.

Legislative intent, as explained in the legislative bill analysis for SB 1431 (enrolled version), provides that the updated NAIC model act and regulations address insurance regulators' need to assess the enterprise risk within a holding company system and its potential impact on the solvency of an insurer within the holding company system. Insurance companies and HMOs are required to provide the department with reports on enterprise or system risks posed by noninsurance operations that could spread to an insurance company and potentially harm its financial condition. These changes provide transparency in holding company system operations while building on the existing firewalls that provide insurance company solvency protection. As a result, the department will have the additional regulatory tools needed to evaluate contagion risk that could develop within an insurance holding company system, and this will enhance the department's ability to protect the interests of the public and the state generally. The adopted sections provide the commissioner with greater access to information about the financial condition of insurance holding company systems and enhanced examination authority.

The adopted amendments to §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214 including figures, contain non-substantive changes in the text to conform to current agency writing style, and correct punctuation and grammar. The adoption also contains updated citations to conform with Insurance Code recodification, current agency address, rennumbers sections to accommodate adopted amendments, recitation of adopted section form numbers and names, and other conforming changes. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Generally, the adoption incorporates statutory changes relating to form filings, definitions, registration of insurers, transactions subject to prior notice, acquisition or divestiture statements-filing requirements, and Forms A - F. The majority of statutory changes in the adoption are from provisions

in SB 1431, and adopted amendments from SB 1283, SB 1284, and SB 1542, are noted separately.

The adopted amendments to §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214, also include changes from the amendments formally proposed on December 28, 2012. The department amends §7.203(f)(6) and (o); and §7.204(a)(1), (a)(2)(A), and (d)(2) to reflect certain statutory threshold changes that may occur during legislative session. These changes are necessary to avoid immediate revision of the holding company rules if specific thresholds for transactions are amended by the Legislature. The department substitutes specific threshold language with adoption by reference to statute to embrace these possible changes. In §7.203(f)(6), the department replaces the language with regard to thresholds in the aggregate or cumulatively that involve the lesser of one-half of 1.0 percent or more of an insurer's admitted assets, or 5.0 percent or more of an insurer's surplus, calculated as of December 31 next preceding with "under Subchapter C of the Act."

The department amends §7.203(o) and deletes the language "within two business days following the declaration and at least 10 calendar days prior to payment" and substitutes "under Insurance Code §823.053" with regard to the period for providing notice to the department of the declaration of a dividend as part of the registration statement. This substitution does not lengthen the notice time frame, but it allows for the rule to automatically comport with changes to the notice periods should the Legislature amend §823.053(b)(1).

The department amends §7.204(a)(1) and deletes the phrase "that involve more than the lesser of five percent of the insurer's admitted assets or 25 percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs." The rules are amended to reflect possible statutory change, but the paragraph remains if the legislature does not address transaction thresholds. The department amends §7.204(a)(2)(A) and deletes "involving either more than one-half of 1.0 percent but less than 5.0 percent of the insurer's admitted assets, or more than 5.0 percent but less than 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st day of December next preceding, and transactions in the securities of affiliates other than a subsidiary of an insurer, which are not subject to paragraph (1) of this subsection." In addition, the department amends §7.204(d)(2) and deletes subparagraphs (A) and (B) which relate to thresholds, and renumbers subparagraphs (C) and (D) as (B) and (C). The first sentence of §7.204(d)(2) is amended to read "[f]or purposes of these sections." The remainder of the first sentence becomes new subparagraph (A) and is added as "an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months under the Act, §823.107." These amendments are also necessary to remove transaction thresholds if statutory changes occur in legislative session.

The department amends §7.205(b) and adds the language "§7.209(a) - (n) and §7.209(o), respectively" to the end of the first full sentence. The change is necessary to clarify that the form content for the acquisition statement can be found in §7.209(a) - (n), while the form content for the divestiture statement can be found in §7.209(o).

In response to comment, the department makes a change to §7.209(n), which is necessary for clarification purposes. The phrase "[a]s applicable" is deleted from the beginning of the sentence and added following the "Insurance Code §823.0595" citation

language to clarify that filing an enterprise risk report with Form A does not apply to all insurers. Only insurers of a certain size, and with regard to the statutory phase-in periods that meet the change of control thresholds in Insurance Code §823.0595, must file an enterprise risk report (adopted new Form F) with a Form A.

In response to comment, the department adopts new language to §7.210(i)(2) and adds the phrase "and, on request of the commissioner, the annual financial statements of the" before the word "affiliates." This change is necessary to align §7.210(i)(2) with Insurance Code §823.052(c-1), with regard to affiliates and requires that the ultimate controlling person file financial statements with the registration statement only on request of the commissioner. Even though the NAIC model regulations do not include affiliates, it is incumbent that the department retains the authority to request affiliate financial statements in the interest of protecting Texas policyholders.

The department amends the second sentence of §7.210(i)(6) and replaces the phrase "published in the Personal Financial Statements Guide," with the words "as issued." This change is necessary to delete the Personal Financial Statements Guide, an American Institute of Certified Public Accountants (AICPA) publication, which is outdated.

The department, in response to comment, amends §7.213(b)(4)(A)(ii) and related §7.204(d)(2)(D). In an effort to provide uniformity with the NAIC model regulations and include more relevant factors in determining the threshold for extraordinary dividends, the department adopts new language in new §7.204(d)(2)(C) and changes "declaration date(s)" to "payment date(s)," and in §7.213(b)(4)(A)(ii) replaces the word "declared" with "paid." These changes are necessary to reflect that the date of the payment and amount paid, rather than the declaration and amount of the declared dividend be used to calculate the aggregate amount of dividends during the past 12 months and for proposed dividends for purposes of the extraordinary threshold.

Also, in response to comment, the department amends the definition of "earned surplus" in §7.213(b)(5). The language "less unrealized capital gains," is deleted from the paragraph. This change is necessary to clarify that earned surplus is defined as "unassigned funds." The remaining line item on the annual statement for the earned surplus calculation is unassigned funds, which is labeled in the annual statement by name.

In response to comment, the department makes a change to §7.213(c)(2). Although the content of the amendment to the board of directors' resolution was not in the proposed rules, the department adopts the language that "[o]n request of the commissioner," the directors' resolution declaring dividends be furnished. This change is necessary to provide administrative ease to the declarant while the department retains the authority to request board of directors' resolution information when it is in the best interest of the policyholders.

In response to comment and in an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the following language from §7.213(c)(4), "[i]nclude pro forma columns for the dividend or distribution, post-payment numbers, and projected numbers for the current year end and the following year end." This change is necessary because requiring extraordinary dividend approval to include the historical and pro forma financials is unduly burdensome and time consuming.

suming to produce projections going out up to 24 months depending on the timing of the filing.

In response to comment, and in a effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the following language from §7.213(c)(6) "[p]rovide a discussion of any recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio." The deletion is necessary to remove the requirement in this subsection which is unduly burdensome and time consuming to produce. Subsequent paragraphs (7) - (11) are renumbered as (6) - (10) to reflect the deletion of §7.213(c)(6).

The figures to §§7.209(o), 7.211(a), 7.212(a), and 7.214(a) are amended to add the word "email" so that individuals can provide the department with another way to contact them for the purpose of receiving notices and correspondence concerning the statements.

Figure to §7.213(c)(10) is amended to add "Insurance Code Chapter 823" and replace "Insurance Code §823.107." The change is necessary to reflect that other sections in Insurance Code Chapter 823 may apply to extraordinary dividends and distributions in addition to §823.107.

Due to the uncertainty of the adoption date of these amendments, the department intends that the changes in Form B requirements under §7.203 and §7.210, do not apply for the 2012 Form B filings due April 30, 2013.

HOW THE SECTIONS WILL FUNCTION. The adopted amendments to §§7.201 - 7.205, 7.209, and 7.210, and new §§7.211 - 7.214 update the rules relating to holding company systems. Changes to §7.201 include adopted amendments to form filings. Section 7.201(a)(1) adopts by reference the latest version of the NAIC biographical affidavit form, which is available on the department's website. In §7.201(a)(2), the term "Financial Analysis" is replaced with "Cashier's Office," and "a copy of the letter transmitting the statement, notice, or application" is replaced with "the Fee Transmittal Form on the department's website," to clarify where to file and which form to attach with the fee.

Section 7.202 includes adopted amendments to definitions. "Divesting person," "Divestiture," and "Enterprise Risk" are added to §7.202(a)(10) - (12), respectively, and are identical to Insurance Code §823.002, in order to highlight the added concepts of divestiture and enterprise risk. Section 7.202(a)(15) tracks language from Insurance Code §823.002(6), regarding the definition of "Insurer," to clarify that the holding company definition no longer includes any agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state. Section 7.202(a)(18) of the rules defining "Insurer" now includes HMOs, as provided in Insurance Code §843.051(f) from SB 1284 (79th Legislature, 2005).

Section 7.203(a) removes an exemption from the Act for an insurance holding company system where each affiliate in the system is privately owned by not more than five security holders, each of whom is an individual, as found in Insurance Code §823.015 from SB 1283 (79th Legislature, 2005). Section 7.203(e)(1) - (12) regarding amendments to registration statements are deleted to simplify the subsection. Section 7.203(e) deletes formal approval by official order to clarify that any

transaction approved by the commissioner is deemed to be an amendment to the registration statement without further action or filing. Section 7.203(g) deletes the requirement that a registrant must file a restated up-to-date registration statement within 120 days of the end of each calendar year that ends in a five or a zero, and adds that an insurer must file an annual registration statement as provided in Insurance Code §823.055(b) from SB 1542 (80th Legislature, 2007). In addition, §7.203(g) includes a provision that an insurer that is required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement, as found in adopted new §7.211 (Form C) and under Insurance Code §823.055(c) from SB 1542 (80th Legislature, 2007) even if there are no changes. A filing fee remains required for Form B. In accord with Insurance Code §823.0595, §7.203(k) adds that the ultimate controlling person of an insurer is required to file an enterprise risk report on adopted Form F.

An amendment to §7.203(m) adds requirements that disclaimers of control or affiliation in narrative format be consistent with the NAIC model regulations, and as provided in Insurance Code §823.010. These requirements were previously located in §7.211 (Form C), which is adopted for repeal in this issue of the *Texas Register*.

Section 7.203(m)(4) adds that the applicant of a disclaimer that has been allowed must notify the commissioner within 15 days after the end of the month if any information constituting the basis for the disclaimer is incomplete, inaccurate, or no longer accurate. The commissioner may disallow the disclaimer for failure to provide the information. Section 7.203(m)(5) deletes the provision that, unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with certain requirements of the Act, as provided in Insurance Code §823.010(f). Section 7.203(m)(5) retains the provision that after a disclaimer has been filed, the insurer is relieved of the duty to register or report under subsection (a) of this section unless and until the commissioner disallows the disclaimer. In addition, §7.203(m)(5) deletes the requirement that the commissioner must furnish all parties in interest with notice and opportunity to be heard prior to disallowing a disclaimer and adds, under Insurance Code §823.010 (e), that if the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing which must be granted by the commissioner. Section 7.203(n) adds failure to file a registration statement or any amendment to a Form B (registration statement) or to adopted Form F (enterprise risk report), under Insurance Code §823.060, as a violation of this subchapter.

An amendment to §7.204 changes the title from "Commissioner's Approval Required" to "Transactions Subject to Prior Notice" to be consistent with NAIC model regulations, and to capture and distinguish the threshold for large transactions versus specific transactions. Section 7.204 (a)(1) concerns large transactions and adds existing statutory language from Insurance Code §823.102(a) that this section applies only to sales, purchases, exchanges, loans or extensions of credit, or investments, including an amendment or modification of an affiliate agreement previously filed under this section. Section 7.204(a)(2) concerns specific transactions, including sales, purchases, exchanges, loans or extensions of credit, or investments, and adds reinsurance agreements, including pooling agreements, and the requirement that these transactions are applicable to amendments or modifications of affiliate agreements as previously filed under Insurance Code §823.103. The non-statutory addition of the term "guarantee" to the rule is

included as an extension of credit and corresponds to NAIC model language in adopted Form D. Section 7.204(a)(2)(D) relates to §7.212 (adopted Form D) and contains the minimum information required for management or service, cost sharing, and rental or leasing agreements to the extent consistent with applicable law or regulation, and as applicable.

Section 7.205 adds the concept of divestiture to the acquisition statements filing requirements under Insurance Code §823.154 and §823.157. Language in §7.205(a) stating that an acquisition of control of a domestic insurer is subject to the Act, §5, regardless of the domestic insurer's exemption from regulation under the Act, §2(r), is deleted in accord with SB 1283 (79th Legislature, 2005). The adopted rule continues to require a domestic insurer to file acquisition statements, and the language in the rule denying the exemption is no longer needed. Adopted §7.205(h) deletes the requirement to file a rarely-used exemption form as found in adopted for repeal §7.213 (Form E) which is also published in this issue of the *Texas Register*.

Adopted amendments to §7.209 (Form A), statement regarding the acquisition, change of control, or divestiture of a domestic insurer, add language to be consistent with NAIC model regulations. Section 7.209(d)(1) and (f)(4) add that biographical data must be in the form of the latest version of the biographical affidavit form published by the NAIC and adopted by reference in §7.201(a)(1) of this title and which is available on the department's website. Section 7.209(e) adds NAIC model language regarding the nature, source, and amount of funds or other consideration and moves the consideration language from §7.209(e)(3) to adopted subsection (e)(1). Section 7.209(g) adds a requirement for a statement of the method by which the fairness of the proposal was determined. Section 7.209(i) adds that the description must identify the persons with whom the contacts, arrangements, or understandings have been made. Section 7.209(m) is not a statutory amendment, but adds the requirement that financial projections of the insurer and the applicant must be attached as an appendix. For clarification, the time frame for the projections moves from §7.209(m)(3) to adopted §7.209(m)(1). Section 7.209(m)(3) was added to adopt rules consistent with NAIC formatting with smaller paragraphs. Section 7.209(m)(5) adds the word "divestiture" to Form A. Section 7.209(n) adds the concept and requirement that, as applicable, the applicant agrees to provide enterprise risk management information required by adopted new §7.214 (Form F) under Insurance Code §823.0595 within 15 days after the end of the month in which the acquisition of control occurs, as required by Insurance Code §823.201(d). The intent of this addition is to preserve the exemption in Insurance Code §823.0595 (g) and comply with the phase-in components of the statute. Section 7.209(o) adds the concept of filing notice regarding divestiture of control under Insurance Code §823.154.

Section 7.210 (Form B) amends the registration statement. Section 7.210(e) replaces former biographical data requirements with NAIC model language. No affidavit is required. Section 7.210(f)(1)(O) adds an internal control inquiry in accord with Insurance Code §823.052 (b)(12). Adopted §7.210(h) and (i) follow the NAIC model language and retain the Form B content. Section 7.210(i)(2) includes affiliates under Insurance Code §823.052(c)(1). In addition, §7.210(i)(2) adds that the filing is at the end of the person's latest fiscal year or any other period as determined by the commissioner. Section 7.210(i)(5) and (6) permit the commissioner's discretion with regard to the standard and type of financial statement to be filed by the ultimate controlling person, whether or not the ultimate controlling person is an

individual. Adopted §7.210(j) deletes the requirement for a copy of the charter or articles of incorporation and bylaws in accord with Insurance Code §823.052 from SB 1542 (80th Legislature, 2007), and adds that an insurer required to file an annual registration statement will also furnish a summary of material changes to the registration statement (adopted Form C) under Insurance Code §823.055(c) from SB 1542 (80th Legislature, 2007). A Form C is not required if a Form B amendment is filed in the interim.

Adopted new §7.211 (Form C), summary of material changes to registration statement, adds language consistent with NAIC model regulations and provides that an insurer that is required to file an annual registration statement must also furnish a summary of material changes to the registration statement in accord with Insurance Code §823.055(c) from SB 1542 (80th Legislature, 2007). The adopted text differs from the NAIC model regulations, to the extent that, under §7.203(e) and (g), only material changes need to be filed as amendments under Insurance Code §§823.053 - 823.055. Section 7.211 (Form C) relating to disclaimers of control or affiliation is adopted for repeal and the requirements regarding disclaimers of control or affiliation under Insurance Code §823.010 are added to §7.203 (m). Adopted Form C must be filed annually with the Form B even if there are no changes to be reported. Form C does not require a separate filing fee from Form B.

Adopted new §7.212 (Form D), prior notice of a transaction, adds the NAIC model regulation language. The adoption for repeal of existing Form D for extraordinary dividends is published in this issue of the *Texas Register*. Section 7.212(b) includes a requirement to identify the parties and furnish information for each of the parties to the transaction. Section 7.212(c) requires a description of the transaction and differs from the NAIC regulations in §7.212(c)(1) because there is no reference to the NAIC model laws. Section 7.212(c)(2), (3), and (5) differ from the NAIC model regulations by including transaction requirements from §7.204(b). Section 7.212(d) concerns sales, purchases, exchanges, loans, extensions of credit, guarantees, or investments. Adopted §7.212(e) concerns loans or extensions of credit to a nonaffiliate and does not include NAIC model language, to avoid conflict with the Act regarding notice parameters. Section 7.212(f) concerns reinsurance and §7.212(g) concerns management, service, and cost-sharing agreements.

Adopted new §7.213 (Form E), notice of ordinary and extraordinary dividends and other distributions, replaces existing §7.213, regarding exemptions, which is adopted for repeal in this issue of the *Texas Register*. Section 7.213 consolidates ordinary and extraordinary dividends and distributions from Form D, concerning extraordinary dividends, and content from the HCDividend form, currently on the department website, concerning ordinary dividends. Section 7.213(b) adds the ordinary dividend content and §7.213(c) contains extraordinary dividend information. Section 7.213(b)(4)(B) is a bridge calculation to determine if information relating to extraordinary dividends and distributions is required. Although adopted §7.213(b)(5), regarding earned surplus, applies to HMOs under Insurance Code §843.051(f), the department will discontinue use of the earned surplus form. The distinction between earned surplus and adequacy of surplus, for purposes of Insurance Code Chapter 823 regarding dividends, no longer remains. Section 7.213(b)(9) adds a certification that the declaration or payment of the dividend or distribution does not violate certain provisions of the Insurance Code, as applicable.

Adopted new §7.214 (Form F) is an addition to the regulations and contains enterprise risk report information required by Insurance Code §823.0595, and it follows the NAIC model language. Insurance Code §823.0595 includes a statutory notice requirement in accord with Acts 2011, 82nd Legislature, ch. 922 (SB 1431), §18 that, subject to the §823.0595(b) phase-in requirements, the department may not implement this section until the 180th day after the date the commissioner has determined that the NAIC has completed an enterprise risk form, has proposed a master confidentiality agreement, and places notice of that determination in the *Texas Register*. The notice is found in adopted §7.214(e).

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§7.203(o)

COMMENT: Two commenters request that the period for providing notice to the department of the declaration of a dividend be longer than the two business days provided. The commenters state that as a practical matter, it is often difficult to time the meeting of the board or obtain signatures of the board members for written consent with the timing of the filing requesting approval of the dividend. The commenters further state that most states and the NAIC model regulations provide for a longer period for the provision of this notice. Since this provision also requires that the notice of the declaration of the dividend also be given at least 10 calendar days prior to payment, the department would have adequate notice of the declaration of the dividend prior to its payment.

AGENCY RESPONSE: The department agrees with the commenters, but makes a different change. The department cannot increase the number of days to provide notice to the department of the declaration of a dividend in the rule, because the second business day is a statutory requirement under Insurance Code §823.053(b)(1). The department will delete the specific time frames from §7.203(o) and add the language "under Insurance Code §823.053" to ensure the rules will comport with any future statutory changes.

§7.204(a)(2)(D)

COMMENT: One commenter requests that even though the proposed requirements for terms or provisions that must be included in management or service agreements are consistent with the NAIC model regulations, the rule differs from the NAIC regulations because it includes rental or leasing agreements in the minimum standards. The commenter further states that Insurance Code §823.101(b-1), which permits the department to determine by rule all provisions that would be included in a cost sharing, services, or management agreement, does not mention rental or leasing agreements. The commenter explains that some of the specific provisions in §7.204(a)(2)(D)(i) - (xiii) seem to better fit cost sharing and management agreements instead of rental or leasing agreements, and requests that only management and cost-sharing agreements be needed to comply with the added minimum terms.

AGENCY RESPONSE: The department disagrees and declines to make a change. SB 1431 added Insurance Code §823.101(b-1), which provides "[a]n agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner." The statute applies to agreements generally and includes cost-sharing, services, or management agreements, but does not limit the types of agreements. Section 7.204(a)(2)(D) adds only what must be

contained in the agreements, which has included the rental or leasing agreements language since 1992. In addition, "must at a minimum, to the extent not inconsistent with applicable law or regulation, and as applicable" was added to clarify that if the terms are not relevant to a type of agreement, then those terms will not be required in the agreement. It is in the best interest of the public that where applicable, there is transparency and full disclosure with regard to registered insurers' agreements.

COMMENT: One commenter requests clarification that previously approved agreements do not have to be refiled as transactions under §7.204(a)(2)(D) unless other amendments or modifications are filed after the effective date of the adopted changes and recommends corresponding language to that effect for §7.204(a)(2) and §7.204(a)(2)(D). The commenter is concerned that the amendments may require insurers to refile all lease, cost-sharing, service, and management agreements if they do not contain the minimum required provisions in subsection (D)(i) - (xiii), which could impose considerable costs on insurers, especially those involving companies in a holding company system domiciled in different states. Further, the commenter states that Chapter 823 provides for standards of review and approval, but does not contain provisions that permit disapproval of an agreement after it has been previously approved. Applying the provisions of a new or amended rule retroactively could be inconsistent with requirements of the Texas and United States Constitutions.

AGENCY RESPONSE: The department agrees that previously approved agreements do not have to be refiled as transactions with regard to §7.204(a)(2)(D) unless other amendments or modifications are filed after the effective date of the adopted changes, but declines to make the change. The department does not intend retroactive application and believes that it is clear that the adopted rule is applicable to future agreements, or existing agreements that are modified or amended subsequent to the effective date of the rule.

COMMENT: One commenter requests that the department confirm in its adoption order that the intent of the language in §7.204(a)(2)(D) is that the parties to an agreement can define what books and records will be those of the insurer and those of an affiliated entity contracting with the insurer. The commenter's concern is that the published rule seems to provide that ownership of books and records related to the agreement remains the property of the insurer; however, an insurer that has contracted with an affiliated broker may be required under federal securities law to maintain certain records that would be the books and records of the broker and not the insurer.

AGENCY RESPONSE: The department agrees in part, and points out that the commenter did not ask the department to change the rule. The adopted amendment provides for the commenter's scenario with the language "to the extent not inconsistent with applicable law or regulation, and as applicable," as found in §7.204(a)(2)(D). To the extent that ownership of books and records by the insurer would conflict with applicable law or regulation or is not applicable for another reason, the parties to an agreement can define what books and records will be those of the insurer and those of an affiliated entity contracting with the insurer. However, the adopted amendment does not provide for the parties to an agreement to define ownership of books and records to an entity other than the insurer in the absence of contravening law or a compelling reason.

§7.209(m)(3)(B)

COMMENT: One commenter requests that the phrase "unless the commissioner permits otherwise," be added to §7.209(m)(3)(B). (The commenter quoted §7.209(l)(3)(B), but the department believes from context that the commenter intended to use §7.209(m)(3)(B)). The commenter states that the current rule is not amended and seems to require individual persons who are applicants in a Form A to include a certificate of an independent public accountant. Further, the commenter states that similar language appears in financial statements filed in a Form B except that §7.210(i)(5) provides that "unless the commissioner permits otherwise," personal financial statements must include the certificate. The commenter states that there are numerous small life insurance companies domiciled in Texas where individuals may be required to file personal financial statements, and the discretion to use other methods of filing should be included in both sections.

AGENCY RESPONSE: The department agrees in part, but declines to make a change. The department did not propose any substantive change to §7.209(m)(3) so the commenter's concerns were not addressed in the proposal. Paragraph 7.209(m)(3) begins with "unless exempted by the commissioner" and applies to subparagraphs (A) and (B) since the subparagraphs should not be read independently from the paragraph. The commenter quoted §7.210(i)(5), but the department believes from context that the commenter may have intended to cite §7.210(i)(6) with regard to individuals. Section 7.210(i)(5) and §7.210(i)(6) differ from §7.209(m)(3)(B) in that the former falls under a larger subsection which contains a heading with no content. Therefore, each paragraph falling under §7.210(i) has to express specific content.

§7.209(n)

COMMENT: One commenter requests that, although "as applicable" was added to adopted new §7.209(n), the department clarify that filing an enterprise risk report with Form A does not apply to all insurers. The commenter states that there are certain exemptions from filing the enterprise risk report, depending on the size of the insurer and the phase-in period in statute. The commenter further states that certain small insurers with less than \$300 million are not required to file the enterprise risk report.

AGENCY RESPONSE: The department agrees and makes a nonsubstantive change to §7.209(n). The phrase "[a]s applicable" is moved from the beginning of the sentence to following the "Insurance Code §823.0595" citation to clarify that only insurers that meet the change of control thresholds in Insurance Code §823.0595 must file an enterprise risk report (adopted new Form F).

§7.210(i)(2)

COMMENT: One commenter requests a change to §7.210(i)(2) that would not require affiliates to file financial statements with the Form B registration statement. The commenter states that this requirement seems inconsistent with the NAIC model act, which requires only financial statements for the ultimate controlling person, and Insurance Code §823.052(c-1), which permits the commissioner to request affiliate financial statements but does not require their filing. The commenter states further that requiring all affiliates to file financial statements may be unnecessary and an administrative burden on both the holding company group and the department. The commenter provides an alternative and suggests defining a materiality threshold when affiliate financial statements are filed.

AGENCY RESPONSE: The department agrees in part and makes a corresponding change. Although the department declines to delete "affiliates" from §7.210(i)(2), new language is added before the word "affiliates" which now reads, "and, on request of the commissioner, the annual financial statements of the affiliates." This change makes §7.210(i)(2) consistent with Insurance Code §823.052(c-1) and the NAIC model act, with regard to affiliates, and requires that affiliates file financial statements with the registration statement only upon request of the commissioner. Even though the NAIC model regulations do not include affiliates, it is incumbent that the department retains the authority to request affiliate financial statements in the interest of protecting Texas policyholders.

§7.213(b)(4)(A)(ii) and related §7.204(d)(2)(D)

COMMENT: Two commenters request that the date of the payment and amount paid, rather than the declaration and amount declared of the dividend, be used to calculate the aggregate amount of dividends during the past 12 months and for proposed dividends for purposes of the extraordinary threshold. The commenters state that using the amount actually paid and the date of the payment is consistent with the NAIC model regulations. The commenters also state that the actual amount of the dividend and the date it is paid are more relevant factors in determining the threshold for extraordinary dividends as opposed to the date of the declaration, which is not as relevant to the cash flows and other financial measures of the insurer. The commenters suggest that insurers often declare a dividend in an amount that is likely higher than the amount of the dividend actually paid in order to have more flexibility once the payment date of the dividend approaches.

AGENCY RESPONSE: The department agrees with this comment and makes the substantive changes. In an effort to provide uniformity with the NAIC model regulations and be more relevant with regard to the financial measures of insurers, the department adopts new language in §7.204(d)(2)(D) and changes "declaration date(s)" to "payment date(s)," and in §7.213(b)(4)(ii) replaces the word "declared" with "paid."

§7.213(b)(5)

COMMENT: One commenter requests that the department clarify what line in the annual statement earned surplus refers to in this section.

AGENCY RESPONSE: The department agrees that this paragraph should be further clarified and points out that no change was requested. However, in an effort to clarify the definition of "earned surplus," the department makes a substantive change to this adoption by deleting the phrase, "less unrealized capital gains" from this subsection. The effect of this deletion is that earned surplus is defined as unassigned funds which is required as a line item on the annual statement.

§7.213(c)(2)

COMMENT: Two commenters request that the department consider removing the requirement to enclose a copy of the directors' resolution declaring the dividend from the dividend filing purely for administrative ease. The commenters state that this is not a requirement in the NAIC model or in the jurisdictions with which the commenters are familiar.

AGENCY RESPONSE: The department agrees in part and makes a substantive change to §7.213(c)(2). Although the request with regard to the board of directors' resolution was not in the proposed rules, the department adopts the phrase "[o]n

request of the commissioner" the directors' resolution declaring dividends be furnished. This language will provide the administrative ease that the commenters request while the department retains the authority to request board of directors' resolution information when in the best interest of the policyholders.

§7.213(c)(4)

COMMENT: Two commenters request that the department reconsider adding the requirement that the request for approval of an extraordinary dividend include the historical and pro forma financials projected numbers for the current year end and the following year end. The commenters state that the requirement to produce projections going out to possibly 24 months, depending on the timing of the filing, would be unduly burdensome and time consuming. The commenters further state that this information is not required in the NAIC model regulations and they are not aware of any other jurisdiction which requires this information.

AGENCY RESPONSE: The department agrees with commenters and makes the substantive change. In an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the phrase "[i]nclude pro forma columns for the dividend or distribution, post-payment numbers, and projected numbers for the current year end and the following year end," from §7.213(c)(4).

§7.213(c)(6)

COMMENT: Two commenters request that the department reconsider adding the requirement that approval of an extraordinary dividend include a discussion of any recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio. The commenters state that this provision is unduly burdensome and time consuming to produce. The commenters state further that this information is not required in the NAIC model regulations and they are not aware of any other jurisdiction which requires this information.

AGENCY RESPONSE: The department agrees with the commenters and makes the substantive change. In an effort to be consistent with the NAIC model regulations and other jurisdictions, the department deletes the language "[p]rovide a discussion of any recent operational changes and anticipated changes to the business plan, including an increase or reduction of premium volume, changes in product mix and markets impacting underwriting and expense ratios, reinsurance changes impacting risk retention, and changes in investment strategy impacting the portfolio," from §7.213(c)(6). Subsequent paragraphs (7) - (11) are also renumbered as (6) - (10) to reflect the deletion of §7.213(c)(6).

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: American Council of Life Insurers (ACLI)

For with changes: American International Group (AIG) and Texas Association of Life & Health Insurers (TALHI)

Against: None

STATUTORY AUTHORITY. The amendments and new sections are adopted in accord with Insurance Code §§823.012(a), 823.052(b), 823.052(c)(13), 823.054(d), 823.055(c), 823.059(c), 823.101(b-1), 823.103(a)(4), 823.154(a)(3), 36.001, and 36.004. Section 823.012(a) provides that the commissioner

may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter. Section 823.052(b) provides that the registration statement must be in a format prescribed by the NAIC or adopted by rule of the commissioner and contain current information relating to the registration statement. Section 823.052(c)(13) provides that the registration statement must also contain information about any other information that the commissioner requires by rule. Section 823.054(d) provides that the commissioner, by rule or order, may provide a standard that is different from the standard provided by Subsection (b). Section 823.055(c) provides that an insurer required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule. Section 823.059(c) provides that the commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter. Section 823.101(b-1) provides that an agreement, including an agreement for cost sharing, services, or management, must include all provisions required by rule of the commissioner. Section 823.103(a)(4) applies only to any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or the public, including an amendment or modification of an agreement previously filed under this section. Section 823.154(a)(3) provides that if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the NAIC or adopted by the commissioner by rule. Section 843.051(g) provides that the commissioner may adopt rules as necessary to implement this subsection in a way that reflects the nature of HMOs, health care plans, or evidences of coverage. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Section 36.004 provides that, except as provided by Section 36.005, the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the NAIC, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

§7.201. *Forms Filings.*

(a) General requirements.

(1) The forms specified in §§7.209 - 7.214 of this title (relating to Form A, Form B, Form C, Form D, Form E, and Form F, respectively) are guides for preparing the statements, notices, and applications required by Insurance Code Chapter 823. They provide notice of the information required and the location the department expects to find it. In preparing any statement, notice, or application, the text of the form need not be repeated so long as it is clear to which matter the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer is in the negative, an appropriate statement to that effect must be made. The forms specified in §§7.209 - 7.214 of this title are also referred to in this subchapter as Forms A - F. Form A is also referred to as the acquisition or divestiture statement, Form B as the registration statement, Form C as the summary of changes to the registration statement, Form D as prior notice of a transaction, Form E as a notice of dividend or distribution, and Form F as an enterprise risk report. For use in accord with §7.209(d) and

(f) of this title, the department adopts by reference the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and available on the department website.

(2) Two complete originally signed copies (unless additional copies are requested by the commissioner) of each statement, notice, or application, including exhibits and all other papers and documents filed in connection with any acquisition statement filed under §7.209 of this title, and one complete originally signed copy of every other statement, notice, or application, including exhibits and all other papers and documents filed, must be filed with the commissioner by personal delivery or by mail addressed to: Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. Each statement, notice, or application will be subject to the appropriate filing fee provided in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee must be forwarded to the Cashier's Office, Mail Code 9999, at the previously stated address under separate cover along with the Fee Transmittal Form available on the department website.

(3) Statements, notices, and applications should be prepared on paper 8 1/2 inches by 11 inches or 8 1/2 inches by 14 inches in size and preferably bound at the top or top lefthand corner. All copies of any statement, notice, application, exhibit, or financial statement must be clear, easily readable, and suitable for photocopying. Debit in credit categories and credits in debit categories must be designated so as to be clearly distinguishable on photocopies. Statements, notices, and applications must be in English and monetary values must be stated in United States currency. If any exhibit or other paper or document filed with a statement, notice, or application is in a foreign language, it must be accompanied by a translation into English and any monetary value shown in a foreign currency must be converted into United States currency with the rate of exchange disclosed in the submission.

(4) Every statement, notice, or application must state on the cover page the names and addresses of all persons on whose behalf it is made.

(b) Incorporation by reference, summaries, and omissions.

(1) Information required by any item of any statement, notice, or application may be incorporated by reference in answer or partial answer to another item. Information contained in any instrument or document filed with the commissioner within five years and currently remaining on file may be incorporated by reference. The reference must clearly identify the material and indicate it is incorporated by reference.

(2) The right to incorporate by reference does not apply to §7.209 of this title or to a completely restated up-to-date registration statement filed in accord with §7.203(g) of this title (relating to Registration of Insurers) and §7.210 of this title.

(3) Where an item requires a summary or outline of the provisions of any document, only a brief statement must be made as to the most important provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document for which reference is allowed by these sections. The particular page and paragraph of the exhibit or document to which reference is made must be specified. If two or more documents required to be attached as exhibits are substantially identical in all material respects, a copy of only one of the documents need be filed. A schedule must be attached identifying and detailing the ways the other document differs from the filed exhibit.

(4) By use of a reference, the person filing is deemed to have verified the accuracy of the information referred to as though it was an original statement, unless the person filing identifies the information as being not verified by the person filing.

(c) Additional information and exhibits. In addition to the information expressly required to be included in the forms set out in these sections the filer must add any further material information needed to make the information contained not misleading. The person filing may also file exhibits in addition to those expressly required. The exhibits must be so marked as to indicate clearly the subject matters to which they refer.

(d) Amendment. Any amendment to a statement, notice, or application must include on the top of the cover page the phrase "Amendment No." and must indicate the date of amendment and not the date of the original filing.

(e) Information unknown or unavailable. If any required information is unknown and not reasonably available to the person filing, either because obtaining the information would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(1) The person filing must give the information on the subject as the person possesses or can acquire without unreasonable effort or expense, together with the sources.

(2) The person filing must include a statement either demonstrating that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.

§7.202. Definitions.

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Insurance Code, Chapter 823.

(2) Affiliate--An affiliate of, or person affiliated with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If the controlling person includes a member of the immediate family of a person, any other person that is an affiliate of the family member is deemed to be an affiliate of the controlling person.

(3) Commercially domiciled insurer--A foreign or alien insurer authorized to do business in this state, that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums constitute 30 percent or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph must be calculated, as follows:

(A) total Texas premium for the preceding three fiscal years (or any lesser period if licensed in Texas less than three years) divided by total premium countrywide for the preceding three years; and

(B) total premium in the state of domicile for the preceding three years divided by total premium countrywide for the preceding three years.

(4) Commissioner--The commissioner of insurance of the State of Texas, the commissioner's associates or deputies, or their designees, as appropriate.

(5) Control--The term "control," including the terms "controlling," "controlled by," and "under common control with," means the power, direct or indirect, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10 percent or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under Insurance Code Chapter 941, or for a reciprocal or interinsurance exchange under Insurance Code Chapter 942. This presumption may be rebutted by a showing made in the manner provided by Insurance Code §823.005, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest with notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises, directly or indirectly, either alone or under an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

(6) Controlled insurer--An insurer controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(7) Controlled person--Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(8) Controlling producer--An insurance broker or brokers or any person, firm, association, or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation, and who, directly or indirectly:

(A) controls or seeks to control a property and casualty insurer as the term control is defined in paragraph (5) of this subsection; and

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with the controlled property and casualty insurer which is equal to or greater than 5.0 percent of the admitted assets of the insurer as reported in the insurer's quarterly statement filed as of September 30 of the prior year. The term "producer" or "controlling producer" as used in these sections is not intended to include an agent or any independent agent acting on behalf of the controlled insurer, licensed under Insurance Code Chapter 4001, Subchapter A, and any subagent or representative of the agent, who acts in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting on behalf of an insured as set forth in this

paragraph, in the transaction in question. The term "producer" or "controlling producer" as used in these sections is not intended to include an attorney-in-fact acting on behalf of a licensed Lloyd's or licensed reciprocal or interinsurance exchange.

(9) Director--A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term must also include an attorney-in-fact of a Lloyds or reciprocal or interinsurance exchange who is charged with responsibility for the management of an insurer.

(10) Divesting person--A person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(11) Divestiture--An abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(12) Enterprise risk--Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(13) Executive officer--The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform policy-making functions for an applicant.

(14) Foreign insurer--Includes an alien insurer.

(15) Holding company--Any person who directly or indirectly controls any insurer, but not including any agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state or any corporation which is wholly owned, directly or indirectly, by any of them.

(16) Immediate family--A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother, sister, mother, father, or grandparent.

(17) Insurance holding company system--Two or more affiliated persons, one or more of which is an insurer.

(18) Insurer--Includes all insurance companies organized or chartered under the laws of this state, commercially domiciled insurers, or insurers licensed to do business in this state, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyd's plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, group hospital service companies and health maintenance organizations, and any other entity which is subject to Insurance Code Chapter 823 by applicable law, but does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(19) Person--An individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or similar entity or combination of them acting in concert, but not a securities broker performing only the usual and customary broker's function.

(20) Security holder of a specified person--One who owns any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" does not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(21) Subsidiary of a specified person--An affiliate controlled by the person directly or indirectly through one or more intermediaries.

(22) Ultimate controlling person--That person which is not controlled by another person (as defined in this subsection).

(23) Voting security--Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders, for or against the election of directors, or any other matter involving the direction of the management and policies of the person, or any other security or instrument the department deems to be of similar nature including, but not limited to, those described in the rules and regulations the department may prescribe in the public interest as a voting security.

(b) Exemption--Commercially Domiciled Insurer.

(1) The commissioner may exempt from the provisions of Insurance Code Chapter 823 and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. The exemption granted under this subsection must set forth the specific criteria under which it is granted and will be subject to annual review. The commissioner may, after notice and opportunity for hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of Insurance Code Chapter 823 and these sections. A rescission of an exemption must set forth the rationale for the rescission. Requests for an exemption under this subsection must be filed with Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. The request must contain a signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer will notify Financial Analysis within 10 days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to policyholders of this state, the commissioner must give consideration to the matters contained in subparagraphs (A) - (D) of this paragraph in connection with an exemption requested under Insurance Code §823.015, and these sections.

(A) Assets in Texas, which are either:

(i) permanent, free, and unencumbered and physically located in Texas in an amount equal to the total unpaid losses attributable to Texas risks; or

(ii) qualifying authorized investments under the Insurance Code comprising 20 percent of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) an asset-to-liability ratio of two to one, if the insurer is a property and casualty insurer;

(ii) an asset-to-liability ratio of one and one-half to one, if the insurer is a life, accident and health insurer;

(iii) the insurer having capital and surplus equal to 250 percent of the minimum risk-based capital described in §7.402 of this title (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs); or

(iv) the insurer having total capital and surplus of at least \$50 million.

(C) Consideration may be given to financial conditions specified in §8.3 of this title (relating to Hazardous Conditions) to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

(D) Consideration may be given to other positive factors with regard to an insurer's operations or conduct.

(2) The provisions of this subchapter do not apply to a foreign or alien insurer if the commissioner has approved a total withdrawal plan from writing all lines of insurance for the insurer under Insurance Code Chapter 827.

§7.203. *Registration of Insurers.*

(a) Registration. Except as provided by the Act, every insurer authorized or incorporated to do business in this state and is a member of an insurance holding company system must register in accord with the Act. The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state; nor to a commercially domiciled insurer granted an exemption under §7.202 of this title (relating to Definitions). The commissioner must terminate the registration of a commercially domiciled insurer when it is demonstrated that it no longer meets the definition of commercially domiciled insurer in §7.202 of this title.

(b) Information filing from insurers. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system and is not required to register under subsection (a) of this section must furnish to the commissioner a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction and all amendments, if required by the commissioner.

(c) Information and forms required. Every insurer subject to registration must file a registration statement in accord with §7.210 of this title (relating to Form B), §7.211 of this title (relating to Form C), and as applicable, to §7.214 of this title (relating to Form F), providing current information about the requested matters.

(d) Materiality. Information which is not material for the purposes of the Act, need not be filed under the Act, §823.054, for certain requirements respecting materiality. See subsection (f) of this section for the rule on material changes.

(e) Amendments to registration statements. Each registered insurer must keep current the information required to be disclosed in its registration statement by reporting all material changes or additions (whether single transactions or cumulative in total). The amendment must be in accord with §7.210 of this title, the registration statement, the cover page requirements of §7.201(d) of this title (relating to Forms Filings), and with a positive statement as to the items of the form not being amended instead of setting out the unamended portions. The amendment must be filed within 15 days after the end of the month in which the registered insurer learns of the change or addition. Any

transaction that is approved by the commissioner is deemed to be an amendment to the registration statement without further action or filing.

(f) **Material changes.** The following occurrences are, without limiting the meaning of the phrase "material changes," deemed material changes for purposes of filing an amendment to the registration statement:

(1) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person in control of the domestic insurer if, after the acquisition, the person, directly or indirectly, owns or controls less than 50 percent of the then issued and outstanding voting securities of the domestic insurer, in which case §7.210(b) and (c) of this title must be made current;

(2) any acquisition of a voting security of a domestic insurer, directly or indirectly, by a person that prior, directly or indirectly, owns or controls more than 50 percent of the then issued and outstanding voting securities of the domestic insurer, in which case §7.210(b) and (c) of this title must be made current;

(3) a change in the control of the registrant, in which case the entire registration statement must be made current (notwithstanding any other provision of this subchapter);

(4) a change in the information required by §7.210(f) and (g) of this title, in which case the respective subsection must be made current;

(5) a change of the chief executive officer, president, or more than one-third of the directors reported in §7.210(e) of this title, in which case the respective subsection must be made current;

(6) any transaction with an affiliate or affiliates which, when taken together with all other transactions with affiliates excluding those transactions approved under §7.204(a)(1) of this title (relating to Transactions Subject to Prior Notice) and those transactions for which notification is given under §7.204(a)(2) occurring within 12 months next preceding, under Subchapter C of the Act. In this case, §7.210(c) and (f) of this title must be made current together with a report of all transactions with affiliates regardless of size within 12 months next preceding. After the transactions are reported and the filings under §7.210(c) and (f) are made current, each subsequent transaction with an affiliate which, when taken together with those transactions which occurred within the 12 months next preceding, were reported under this subsection and Subchapter C of the Act, must be reported under subsection (e) of this section.

(g) **Annual amendment.** Within 120 days after the end of each fiscal year of the ultimate controlling person (that person which is not controlled by another person) of the insurance holding company system, the registrant must file an annual registration statement. An insurer required to file an annual registration statement must also furnish a summary of material changes from the prior year's annual registration statement under §7.211 of this title.

(h) **Termination of registration.** The commissioner must terminate the registration of any insurer as provided in Insurance Code §823.056.

(i) **Consolidated filing.** Any licensed insurer may file a consolidated registration statement or any amendment on behalf of itself and any affiliated insurer or insurers which are required to register under subsection (a) of this section, if so authorized by the affiliates. Each registration statement may include information regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state. Each licensed insurer in the filing must determine the correctness of the entire statement and amendments and is bound by the terms of the entire statement and amendment. The

statement may be made under the provisions of subsection (j) of this section.

(j) **Alternative registration.**

(1) In lieu of filing a registration statement as specified in §7.210 of this title, a licensed insurer may file a copy of the registration statement or similar report it is required to file in its state of domicile (or a report it is required to file in another state where it is licensed if its state of domicile requires no such report) provided:

(A) the statement or report contains information substantially similar to information required in §7.210 of this title and any of the information not in the statement or report is provided by supplement; and

(B) the filing insurer is the principal insurer in the insurance holding company system or, in the case of a consolidated statement, the statement is in the form required by the principal insurer's domicile.

(2) Whether the filing insurer is the principal insurer in the insurance holding company system is a question of fact. An insurer filing a registration statement (or report in lieu of the information specified in §7.210 of this title on behalf of an affiliated insurer must set forth a simple statement of facts which will substantiate the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (1) of this subsection.

(4) The commissioner may require under this subsection or subsection (i) of this section separate filings if the commissioner deems the filings necessary in the interest of clarity, ease of administration, or the public good.

(k) **Enterprise Risk Report.** The ultimate controlling person of an insurer required to file an enterprise risk report under Insurance Code §823.0595 must furnish the required information on Form F, which is made a part of these regulations.

(l) **Exemptions.** The provisions of this section do not apply to any insurer, information, or transaction if and to the extent exempted by the commissioner by rule, regulation, or order.

(m) **Disclaimer.**

(1) Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or the disclaimer may be filed by the insurer or any member of an insurance holding company system as a separate filing.

(2) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (referred to as the "subject") must contain the following information:

(A) the number of authorized, issued, and outstanding voting securities or rights of the subject;

(B) with respect to the person whose control is denied and all affiliates of the person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;

(C) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of the person; and

(D) a statement explaining why the person should not be considered to control the subject.

(3) The applicant must simultaneously furnish a copy of any disclaimer filed with the commissioner to the insurer, if the affected insurer is not a party to it. The insurer must, within 15 business days after receipt, unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer.

(4) The applicant of a disclaimer which has been allowed must notify the commissioner within 15 days after the end of the month if any information constituting the basis for the disclaimer is incomplete, inaccurate, or no longer accurate. The commissioner may disallow the disclaimer for failure to provide the information.

(5) After a disclaimer has been filed, the insurer is relieved of the duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. If the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing which must be granted by the commissioner.

(6) After a disclaimer of control or affiliation has been filed by any person, any acquisition, in any manner, directly or indirectly, of a voting security of the domestic insurer by the person is subject to the Act, in the absence of the filing within 15 days after the end of the month in which the acquisition of an additional voting security occurs, of an amendment makes current the disclaimer of control or affiliation previously filed under this subsection.

(n) Violations. The failure to file a registration statement or any amendment to a Form B (relating to Registration Statement) or Form F (relating to Enterprise Risk Report) within the time specified for the filing is a violation of this section.

(o) Dividends and distributions. Each registered insurer must, by personal delivery, by facsimile, or by mail addressed to: Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104, provide notice to the commissioner of all dividends and other distributions to shareholders under Insurance Code §823.053 in Form E (relating to Notice of Dividend or Distribution) and the notice is deemed an amendment to the registration statement without further action or filing. Prepayment notices will be considered promptly. Each prepayment notice must be accompanied by documentation supporting each of the standards specified in Insurance Code, §823.008, unless the documentation has previously been provided during the current calendar year and the person to whom the documentation was sent is identified. Dividends and distributions must be reviewed by the commissioner and, if the standards in the Act, §823.008 are not met, the commissioner will take appropriate action, including, but not limited to, that provided under Insurance Code §§82.001 - 82.056, 83.001 - 83.153 and Chapters 403, 404, 441, and 443. All reported dividends and distributions must be reviewed annually in the registration statement filed under §7.210 of this title. See §7.204(d) of this title for requirements regarding extraordinary dividends and distributions.

§7.204. Transactions Subject to Prior Notice.

(a) Prior approval and notice.

(1) The prior written approval of the commissioner is required for the transactions specified in the Act, §823.102. This section only applies to sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments, including an amendment or modification of an affiliate agreement previously filed under this section.

(2) The following transactions under the Act, §823.103, including any amendments or modification of an agreement as previously

filed between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any like transaction at least 30 days prior, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within the period:

(A) sales, purchases, exchanges, loans or extensions of credit or guarantees, or investments;

(B) reinsurance agreements, including reinsurance treaties, or pooling agreements, or any amendments or modification to any agreement, and those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(C) any contract, agreement, or arrangement for the furnishing or receiving of services or facilities on a regular or systematic basis; or

(D) management or service agreements, cost sharing agreements, rental or leasing agreements must at a minimum, to the extent not inconsistent with applicable law or regulation, and as applicable:

(i) identify the person providing services and the nature of the services;

(ii) set forth the methods to allocate costs to include Insurance Code §823.101(e);

(iii) require timely settlement, at least every 90 days, and compliance with the requirements in the Accounting Practices and Procedures Manual published by the National Association of Insurance Commissioners;

(iv) prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(v) state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(vi) define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(vii) specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(viii) state that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(ix) include standards for termination of the agreement with and without cause;

(x) include indemnifying the insurer in the event of gross negligence or willful misconduct by the affiliate providing the services;

(xi) specify that, if the insurer is placed in receivership or seized by the commissioner under Insurance Code Chapter 443:

(I) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and

(II) all books and records will immediately be made available to the receiver or the commissioner, and must be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(xii) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership under Insurance Code Chapter 443; and

(xiii) specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under Insurance Code Chapter 443, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered;

(E) agreements to consolidate federal income tax returns, which agreements must provide that a domestic insurer will be adequately indemnified in the event the Internal Revenue Service levies upon the insurance company's assets for unpaid taxes in excess of the amount paid under the agreement;

(F) transactions with affiliated financial institutions, other than fully insured deposits; and

(G) participation in an investment pool by a property and casualty insurer under Insurance Code Chapter 424; and

(H) any material transactions which the commissioner has determined after notice may adversely affect the interest of the insurer's policyholders or of the public.

(3) A domestic insurer may not enter into transactions that are part of a plan or series of similar transactions with persons within the holding company system to avoid the statutory threshold amount and avoid review. If the commissioner determines that the transactions were entered into over any 12-month period for that purpose, the commissioner may consider the series of transactions with regard to their cumulative effect and may apply the applicable statutory thresholds or the commissioner may apply sanctions under the Code.

(4) Nothing in this rule will authorize or permit any transactions which, in the case of a noncontrolled insurer, would be otherwise contrary to law.

(5) The commissioner, in reviewing transactions, must consider whether the transactions comply with the standards set forth in subsection (c) of this section and whether they may adversely affect the interest of policyholders. Any disapproval by the commissioner of any of the transactions must set forth the specific reasons for the disapproval.

(6) The approval of any transaction under this subsection is deemed an amendment under §7.203(e) of this title (relating to Registration of Insurers) to an insurer's registration statement without further filing.

(b) Transactions. An insurer required to request approval of transactions under subsection (a)(1) of this section and give notices of proposed transactions under subsection (a)(2) of this section, must furnish the required information on Form D (relating to Prior Notice of a Transaction) including the applicable filing fee provided for in §7.1301(d)(23) of this title (relating to Regulatory Fees). The descriptions must in all cases include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identities of all parties to the transactions; whether any officers or directors of a party are pecuniarily interested, and copies of any proposed contracts, agreements, or memoranda of understanding between the parties relating to the transaction along with sufficient competent documentation evidencing compliance with the standards specified in Insurance Code §823.101, and evidencing that the transaction will not adversely affect the interest of policyholders. Proposed contracts, agreements, or memoranda of understanding must provide for settlement within 90 days. No request or

notice is deemed filed with the commissioner until the date all of the material has been provided.

(c) Transactions with affiliates and others. Material transactions by registered insurers with their holding companies, subsidiaries, or affiliates are subject to the standards specified in the Act, §823.101.

(d) Extraordinary dividends and other distributions.

(1) An insurer subject to registration under §7.203(a) of this title must not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) 30 days after the commissioner has received written notice in accord with §7.213 of this title (relating to Form E) of the declaration, including the applicable filing fee under §7.1301(d)(23) of this title, provided the commissioner has not disapproved the payment; or

(B) the commissioner approves the payment within the 30-day period. The written notice required under this paragraph will be deemed filed with the commissioner only when all material sufficient to constitute a complete filing, including documentation to support each of the standards set forth in the Act, §823.008, and the payment of any required filing fee under §7.1301(d)(23) of this title have been provided.

(2) For purposes of these sections:

(A) an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months under the Act, §823.107;

(B) an extraordinary dividend or distribution must not include pro rata distributions of any class of an insurer's own securities;

(C) in determining the 12-month cumulative amount for dividends or distributions, the calculation must be based on the payment date(s) of the dividends or distributions.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution under the conditions specified in the Act, §823.107.

(e) Adequacy of surplus. For the purposes of these sections, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the factors specified in the Act, §823.008, among others, must be considered.

§7.205. Acquisition or Divestiture Statements--Filing Requirements.

(a) Filing Requirements. Filing and other regulatory requirements for acquisitions, changes of control, or divestitures and certain other matters as specified in the Act, §823.153 and §823.154, are governed by the Act, §823.153 and §823.154. For purposes of this subsection, a domestic insurer as defined in the Act, §823.153, includes any person controlling a domestic insurer, including a commercially domiciled insurer, unless the person is, either directly or through its affiliates, primarily engaged in business other than the business of insurance. A change or substitution of an attorney-in-fact of a Lloyds' or reciprocal or interinsurance exchange is subject to the Act, §823.154. A failure to file complete and accurate information in all material respects is grounds for a denial by the commissioner under the Act, §823.157.

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition or divestiture statement) must be made in accord with §7.209 of this title (relating to Form A), the acquisition or divestiture statement, §7.209(a) - (n) and §7.209(o), respectively. The acquiring party must provide additional financial information in form or substance as required by

the commissioner which is material to the finding required by the Act, §823.157. Any financial information required under the Act, §823.203, may be waived by the commissioner if the information is not deemed material. No statement required by subsection (a) of this section will be deemed filed with the commissioner until the date all material required and sufficient to constitute a full statement has been provided.

(c) Partnerships and corporate filings. If the person required to file the acquisition statement is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by §7.209 of this title be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or if the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by §7.209 be given with respect to the corporation and by each executive officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(d) Amendment. If any material change occurs in the facts set forth in the acquisition or divestiture statement filed with the commissioner, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the domestic insurer within two business days after the person learns of the change.

(e) Acquisition or divestiture of a domestic insurer as defined in subsection (a) of this section.

(1) If the person being acquired or divested is a domestic insurer solely because of the provisions of subsection (a) of this section, the name of the domestic insurer on the cover page should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) Where a domestic insurer as defined in subsection (a) of this section is being acquired or divested, references to "the insurer" contained in §7.209 of this title refer to both the domestic subsidiary insurer and the person being acquired or divested.

(f) Approval or denial by commissioner; hearings. All mergers, acquisitions, changes of control, or divestitures and other matters specified in the Act, §823.154, and mergers contemplated by Insurance Code §441.006, are subject to the Act, §823.157. The acquiring or divesting party has the burden of providing sufficient competent evidence for the commissioner to make the determinations required under the Act, §823.157.

(g) Notices; payment of expenses.

(1) Notices, payments of expenses, and other matters specified in the Act, §823.156, must comport with that subsection.

(2) All provisions of Insurance Code Chapter 823, and this subchapter relating to the timely mailing of a copy of the acquisition or divestiture statement, and relating to the timely mailing of a copy of a notice of hearing before the commissioner to an insurer, may be waived by the written unanimous consent of the insurer and the person or persons filing such acquisition or divestiture statement. The written waiver must acknowledge receipt of a copy of the acquisition or divestiture statement.

(h) Exemptions. The provisions of this section do not apply to transactions and other matters exempted under the Act, §823.164. A restructuring within an insurance holding company system which results in a direct or indirect change in control of a domestic insurer is subject to the Act, §823.164(h)(1). An acquisition of a voting security

of a domestic insurer specified in the Act, §823.164(f)(1) and (2), must be disclosed by amendment to the registration statement as provided in §7.203(f) of this title (relating to Registration of Insurers). An acquisition of a voting security of a domestic insurer by a security holder controlling, directly and indirectly, 50 percent of the then issued and outstanding voting securities of the domestic insurer, is subject to the Act, §823.164(g). An acquisition of a voting security of an insurer domiciled in this state which is not subject to the Act, §823.154, by virtue of the Act, §823.153, is subject to the Act, §823.164(h)(2).

(i) Retention of control. For certain matters relating to retention of control and certain violations of the Act, see the Act, §823.163.

(j) Duty of insurer. Authorized insurers must notify the commissioner of control of, or of actions to acquire control of, an insurer as required by the Act, §823.161.

(k) Preliminary filings. Any acquisition or divestiture statement may be preliminarily filed with the commissioner to obtain a preliminary review by the commissioner. It must be clearly marked or designated as a preliminary filing. The preliminary filing must not invoke the requirements of this subchapter or Insurance Code Chapter 823, requiring that notice be given to the affected insurer involved. The preliminary filing will have no legal effect and does not constitute compliance with Insurance Code Chapter 823, and this subchapter. The commissioner is not bound by the preliminary review nor deemed to have in any manner approved the filing.

(l) Violations. The following are violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed under this section; or

(2) the effectuation of, or any attempt to effectuate, an acquisition, change of control of, divestiture, or merger with, a domestic insurer unless the commissioner has approved it.

(m) Additional violations. Each director or officer of an insurance company subject to these sections, or of an insurance holding company system subject to these sections, who knowingly and willfully violates, participates in, or assents to or who knowingly and willfully permits any of the officers, agents, or employees of the insurer or holding company system to engage in transactions or make investments that have not been properly reported or submitted under these sections or that knowingly and willfully violate these sections, is subject to administrative penalty under Insurance Code §§84.001-84.051.

(n) Additional sanctions. An entity that holds a certificate of authority granted by the department or the commissioner and that violates the Insurance Code is subject to the sanctions authorized under Insurance Code §§82.001-82.056.

(o) Producer-controlled property and casualty insurer.

(1) For purposes of this section, a controlling producer, as defined in §7.202(a)(8) of this title (relating to Definitions), is subject to the filing requirements of the Act, in addition to the following requirements.

(A) No acquisition of an insurer by a controlling producer in another state may be approved by the commissioner under the Act, §823.157, unless the acquiring party demonstrates, to the satisfaction of the commissioner, compliance with the requirements contained in subparagraph (B) of this paragraph.

(B) Approval of the acquisition of an insurer by a controlling producer in another state may not be approved unless the following requirements are met.

(i) Required contract provisions. A controlled insurer must not accept business from a controlling producer and a con-

trolling producer must not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and which contains the following:

(I) a provision that the controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer must suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(II) a provision that the controlling producer render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

(III) a provision that the controlling producer remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that the premiums or installments collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(IV) a provision that all funds collected for the controlled insurer's account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System;

(V) a provision that the controlling producer maintain separately identifiable records of business written for the controlled insurer;

(VI) a provision that the contract not be assigned in whole or in part by the controlling producer;

(VII) a provision that the controlled insurer provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer must adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(VIII) a provision establishing the rate and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subclause and subclause (VII) of this clause, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(IX) a provision that, if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, the compensation must not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. No commissions may be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified;

(X) a provision limiting the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer must notify

the controlling producer when the applicable limit is approached and must not accept business from the controlling producer if the limit is reached. The controlling producer must not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(XI) a provision that the controlling producer may negotiate but must not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(ii) Audit committee. Every controlled insurer must have an audit committee of the board of directors composed of independent directors. The audit committee must annually meet with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the controlled insurer's loss reserves.

(iii) Reporting requirements.

(I) In addition to any other required loss reserve certification, the controlled insurer must annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line or subline of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the controlling producer.

(II) The controlled insurer must annually report to the commissioner in its registration statement filed under §7.203(g) of this title the amount of commissions paid to the controlling producer, the percentage the amount represents of the net premium written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(iv) Disclosure requirements. The controlling producer, prior to the effective date of the policy, must deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer must retain in the records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the controlling producer and that the subproducer has notified or will notify the insured.

(2) The contract referred to in paragraph (1)(B)(i) of this subsection does not provide to or expand any rights or privileges of a controlling producer, including, but not limited to, authority to place or write business, that do not otherwise exist or could not otherwise be exercised under the laws of the State of Texas or another state.

(p) A producer controlled insurer is subject to all the provisions of the Act absent a determination that the laws of its domiciliary state are substantially similar as provided by the Act, §823.014.

§7.209. *Form A.*

(a) Statement regarding the acquisition or change of control of a domestic insurer.

Figure: 28 TAC §7.209(a)

(b) Insurers and method of acquisition. State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

(c) Identity and background of the applicant.

(1) State the name and address of the applicant seeking to acquire control over the insurer.

(2) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any predecessors have been in existence and fully describe any business the person and any of its affiliates intend to commence.

(3) Furnish a chart or listing clearly identifying the interrelationships between the applicant and all affiliates of the applicant. Indicate in the chart or listing the percentage of voting securities of each person controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

(d) Identity and background of individuals associated with the applicant.

(1) Furnish biographical data for the applicant if the person is an individual, or for all persons who are directors, executive officers, or owners of 10 percent or more of the voting securities of the applicant if the applicant is not an individual, with the biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings).

(2) The applicant if the person is an individual, or for persons who are the chair of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, must comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct).

(e) Nature, source, and amount of funds or other consideration.

(1) Describe the nature, source, and amount of funds or other consideration used or to be used in effecting the merger or other acquisition of control. If any part is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements.

(2) Explain the criteria used in determining the nature and amount of the consideration.

(3) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he or she must specifically request that the identity be kept confidential.

(f) Future plans for insurer.

(1) Provide a business plan which describes any plans or proposals which the applicant may have or may contemplate making to

cause the insurer to pay dividends or make other distributions, liquidate the insurer, sell any of its assets, merge or consolidate it with any person or persons, make any other material change in its business operations or corporate structure or management, or cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party, and describe any financial or employment guarantees given to present and contemplated management.

(2) Describe applicant's operational plans for the domestic insurer covering the succeeding 24 months, including, but not limited to, change of location, change of name, increase in capital and/or surplus, reinsurance activity, type of business to be written, and anticipated premium volume.

(3) Provide:

(A) an affirmative statement of applicant's and the domestic insurer's compliance with Chapter 22 of this title (relating to Privacy); and

(B) if applicant proposes revisions to the domestic insurer's current privacy policy, the proposed revised privacy policy along with any revised notices required under §22.12 of this title (relating to Revised Privacy Notices) and any other notices or authorization requests and forms applicant will be required to provide to maintain compliance with Chapter 22 of this title.

(4) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each position, evidence of the individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(5) Describe any other arrangement or agreement, oral or written, entered into by any acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months.

(g) Voting securities to be acquired. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities which the applicant, its affiliates, and any person listed in subsection (d) of this section plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement of the method by which the fairness of the proposal was determined.

(h) Ownership of voting securities. State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in subsection (d) of this section.

(i) Contracts, arrangements, or understandings with respect to voting securities of the insurer. Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any persons listed in subsection (d) of this section is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been made.

(j) Recent purchases of voting securities. Describe any purchases of any voting securities of the insurer by the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.

(k) Recent recommendations to purchase. Provide a copy of any written, or a confirmed description of any oral, recommendations to purchase any voting security of the insurer made by the applicant, any of its affiliates, or any person listed in subsection (d) of this section, or by anyone based on interviews with or at the suggestion of the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement.

(l) Agreements with broker-dealers. Provide a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers.

(m) Financial statements and exhibits.

(1) Financial statements, exhibits, and financial projections of the insurer and the applicant must be attached to this statement as an appendix, but list under this subsection the financial statements and exhibits so attached. Projections of the domestic insurer and the applicant must be for a period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control and any additional document or papers required by regulation.

(2) The financial statements must include the annual financial statements of the persons identified in subsection (c)(3) of this section for the preceding three fiscal years (or for such lesser period as the applicant and its affiliates and any predecessors have been in existence), and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that the unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, from the date of the financial statement to the date of the affidavit or certification. The statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

(3) Unless exempted by the commissioner, the annual financial statements of the applicant must be made in accord with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant that the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the certificate is not available, then the financial statement must be sworn to by the applicant as correctly reflecting its financial condition, and in that case, the commissioner at the commissioner's discretion may require the financial statement to be certified by an independent public accountant.

(A) If the applicant is an insurer which is actively engaged in the business of insurance and licensed to do business in this state, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accord with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state.

(B) If the applicant is an individual person, the person must provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he or she is not aware of any material modifications that should be made to the accompanying financial statement for it to be in conformity with generally accepted accounting principles and must provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.

(4) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material; and proposed employment, consultation, advisory, or management contracts concerning the insurer.

(5) In addition to the other material required to be filed by this section, a person described in §7.205(a) of this title (relating to Acquisition or Divestiture Statements--Filing Requirements) must file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years. These reports are for review of the department, and are not a part of the material required to be submitted under the Act. However, the materials will be open for public inspection at the offices of the department during the pendency of the application.

(n) Enterprise risk management. Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F under Insurance Code §823.0595, as applicable, within 15 days after the end of the month in which the acquisition of control occurs.

(o) Notice regarding divestiture of control under Insurance Code §823.154.

Figure: 28 TAC §7.209(o)

(1) Provide the name, title, address, email, and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) Provide notice that applicant is divesting control of the above named insurance company(ies) and describe how control is being divested and include the percentage of control being divested.

(3) State the name and address of the recipient(s) of the divestiture of control.

(4) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.

(5) Describe and state the name of the person in control of the insurer before and after the divestiture of control.

(p) Signature and certification. Signature and certification of the following form:

Figure: 28 TAC §7.209(p)

§7.210. *Form B.*

(a) Insurance holding company system registration statement. Figure: 28 TAC §7.210(a)

(b) Identity and control of registrant. Furnish the exact name of each insurer registering or being registered ("the registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

(c) Organizational chart. Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated per-

sons within the insurance holding company system, including all affiliated persons as defined in §7.202(a)(2) of this title (relating to Definitions). The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of the control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(d) The ultimate controlling person. As to the ultimate controlling person (that person which is not controlled by another person) in the insurance holding company system, furnish the following information:

- (1) name;
- (2) home office address;
- (3) principal executive office address;
- (4) the organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.; together with a conformed copy of the charter or articles of incorporation and its bylaws;
- (5) the principal business of the person;
- (6) the name and address of any person who holds or owns 10 percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and
- (7) if court proceedings looking toward a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

(e) Biographical information. If the ultimate controlling person is a corporation, organization, limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

(f) Transactions, relationships, and agreements.

(1) Briefly describe the following agreements in force, relationships subsisting, and transactions currently outstanding between the registrant and its holding company, its subsidiaries, and its affiliates:

- (A) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the registrant, or of the registrant by its affiliates;
- (B) purchase, sales, or exchanges of assets;
- (C) investment activities of an investment pool and transactions between pools and participants (Insurance Code Chapters 424 and 425);
- (D) transactions not in the ordinary course of business;
- (E) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;

(F) all management and service contracts and all cost sharing arrangements;

(G) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(H) all dividends and other distributions to shareholders;

(I) agreements with affiliates to consolidate federal income tax returns;

(J) all transactions with affiliated financial institutions;

(K) the amount of commissions paid to the controlling producer, the percentage such amount represents of the net premium written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance;

(L) all surplus debentures, surplus notes, premium income notes, bonds, or debentures, and other contingent evidences of indebtedness outstanding;

(M) any affiliated transaction not disclosed in subparagraphs (A) - (L) of this paragraph which is subject to the Act;

(N) any pledge of an insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of its insurance holding company system;

(O) the corporate governance and internal control responsibilities of the insurer's board of directors, including a statement that:

(i) the insurer's senior management or officers have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures; and

(ii) the insurer's board of directors oversees corporate governance and internal controls; and

(P) any other information the commissioner requires.

(2) No information need be disclosed if such information is not material. See §7.203(d) of this title (relating to Registration of Insurers). The description must be in a manner permitting the proper evaluation by the commissioner, and must include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identity of all parties to the transaction; relationship of the affiliated parties to the registrant; and the holding company section number and/or commissioner's order number.

(g) Litigation or administration proceedings. Furnish a brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(1) criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party; and

(2) proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

(h) Required statement. The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions,

the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

(i) Financial statements and exhibits.

(1) Financial statements and exhibits should be attached to this statement as an appendix. List under this item the financial statements and exhibits attached.

(2) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements must include the annual financial statements of the ultimate controlling person and, on request of the commissioner, the annual financial statements of the affiliates in the insurance holding company system as of the end of the person's latest fiscal year or any other period as determined by the commissioner.

(3) If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information must be filed for any subsequent period to the extent available. Financial statements may be prepared on either an individual basis or, unless the commissioner otherwise requires on a consolidated basis if consolidated statements are prepared in the usual course of business.

(4) Other than with respect to the preceding, the financial statement must be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements are deemed to be an appropriate form and format.

(5) Unless the commissioner permits otherwise, the annual financial statements must be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accord with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

(6) Unless the commissioner permits otherwise, any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review must be conducted in accord with standards for review of personal financial statements as issued by the American Institute of Certified Public Accountants. Personal financial statements must be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements for the statements to be in conformity with generally accepted accounting principles.

(7) Exhibits must include copies of the latest annual reports to shareholders of the ultimate controlling person, proxy material used by the ultimate controlling person, and any additional documents or papers required by regulation.

(j) Form C required. A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

(k) Signature and certification. Furnish signature and certification of the following form:

Figure: 28 TAC §7.210(k)

§7.211. Form C.

(a) Summary of Material Changes to Registration Statement is required as follows.

Figure: 28 TAC §7.211(a)

(b) Furnish a brief description of all items in the current annual registration statement which represent material changes from the prior year's annual registration statement. The description must be in a manner permitting proper evaluation by the commissioner, and must include specific references to the items in the annual registration statement and to the terms contained.

(c) Changes occurring under §7.210(c) of this title (relating to Form B) in the percentage of each class of voting securities held by each affiliate need only be included where the changes result in ownership or holdings of 10 percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

(d) Changes occurring under §7.210(e) of this title need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

(e) If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of the change must be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

(f) The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose is to avoid statutory threshold amounts and the review that might otherwise occur.

(g) Signature and certification are required as follows.

Figure: 28 TAC §7.211(g)

§7.212. Form D.

(a) Prior notice of a transaction. Prior notice of a transaction is required as follows.

Figure: 28 TAC §7.212(a)

(b) Identity of parties to transaction. Furnish the following information for each of the parties to the transaction:

- (1) name;
- (2) home office address;
- (3) principal executive office address;
- (4) the organizational structure, i.e. corporation, partnership, individual, trust, etc.;
- (5) a description of the nature of the parties' business operations;
- (6) relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;
- (7) where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

(c) Description of the transaction. Furnish the following information for each transaction for which notice is given:

- (1) a statement identifying the statute under which the transaction is filed;
- (2) a statement of the nature of the transaction and the reasons for entering into or changing the transaction;
- (3) a statement of how the transaction complies with §823.101;
- (4) the proposed effective date of the transaction; and
- (5) the financial impact of the transaction on the domestic insurer.

(d) Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments.

(1) Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost, and its fair market value, together with an explanation of the basis for evaluation.

(2) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount the insurer will be obligated to make available under the loan, extension of credit, or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

(3) If the transaction involves an investment, guarantee, or other arrangement, state the period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of the investments, guarantees, or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(e) Loans or extensions of credit to a non-affiliate. If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding through which the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase the assets of, or make investments in, any affiliate of the insurer making loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in any affiliate. Describe the amount and source of funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction on the insurer's surplus.

(f) Reinsurance. If the transaction is a reinsurance agreement or modification or a reinsurance pooling agreement or modification described in Insurance Code §823.103(a)(2), furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration

involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(g) Management agreements, service agreements, and cost sharing arrangements.

(1) For management and service agreements, furnish:

(A) a brief description of the managerial responsibilities or services to be performed;

(B) a brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(2) For cost-sharing arrangements, furnish:

(A) a brief description of the purpose of the agreement;

(B) a description of the period of time during which the agreement is to be in effect;

(C) a brief description of each party's expenses or costs covered by the agreement;

(D) a brief description of the accounting basis to be used in calculating each party's costs under the agreement;

(E) a brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

(F) a statement regarding the cost allocation methods specifying whether proposed charges are cost or market based. If market based, include the rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and

(G) a statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.

(h) Signature and certification. Signature and certification are required as follows.

Figure: 28 TAC §7.212(h)

§7.213. *Form E.*

(a) Notice of Ordinary and Extraordinary Dividends and Other Distributions. Complete subsections (a) and (b) of this section for an Ordinary Dividend under §7.203(o) of this title (relating to Registration of Insurers) and complete subsections (a) - (c) of this section for an Extraordinary Dividend under §7.204(d) of this title (relating to Transactions Subject to Prior Notice).

Figure: 28 TAC §7.213(a)

(b) Dividend or distribution.

(1) Name of insurer.

(2) Address of insurer.

(3) Declaration of dividend:

(A) Amount of declared dividend or distribution: \$

(B) Recipient of declared dividend or distribution.

(C) Declaration date.

(D) Proposed payment date.

(4) The dividend or distribution is in compliance with the Act and is indicated in subparagraphs (A) and (B) of this paragraph:

(A) Calculation.

(i) Amount of current dividend or distribution: \$

(ii) Dividends or distributions paid during preceding 12 months, excluding current dividend or distribution but including declaration date, payment date, type of dividend or distribution, and amount: \$

(iii) Total of (i) and (ii): \$

(iv) Surplus as regards policyholders (net worth for HMO) as of preceding December 31: \$

(I) 10 percent of (iv) for Life, P&C, and HMO: \$

(II) 20 percent of (iv) for Title: \$

(v) Operating income:

(I) Net gain from operations before realized capital gains as of preceding December 31 for Life, Title and HMO: \$

(II) Net income as of preceding December 31 for P&C: \$

(vi) Greater of calculated surplus from (iv) or the operating income from (v): \$

(B) If the amount from (iii) exceeds the amount from (vi), then provide the information required by subsection (c) relating to extraordinary dividend and distribution.

(5) Earned surplus, defined as the unassigned funds (surplus), must be greater than the current dividend or distribution amount stated in (4)(A)(i) of this subsection. Earned surplus must be calculated as of the most recent financial information available.

(6) Supporting documentation of the balance sheet, summary of operations including capital and surplus account, and cash flow statement of the most recently filed monthly, quarterly, or annual statement, together with documentation to support the standards specified in Insurance Code §823.008.

(7) Additional requirements are as follows:

(A) Identify property, including bank accounts, to be used to pay the dividend or distribution or to be converted to pay the dividend or distribution.

(B) Provide Insurer's ratio of net written premium to capital and surplus for 12 months as of the end of the last calendar year. In addition, provide the same ratio after deducting the total amount of the present dividend or distribution.

(C) Identify and describe any reason (other than general business trends) that earnings are expected to decrease.

(D) Identify any investment or contribution by the Insurer to subsidiaries made since the last calendar year or to be made in the immediate future.

(E) Give a brief statement as to the effect upon the insurer's capital and surplus or HMO's net worth and the reasonableness of remaining capital and surplus or net worth after payment of dividend or distribution in relation to the Insurer's outstanding liabilities and the adequacy of capital and surplus or net worth relative to the Insurer's financial needs.

(8) Certification that there has been no material adverse change in the financial condition of the Insurer since the date of the most recent financial statement filed with the department and the payment of the dividend or distribution does not adversely affect the interest of policyholders.

(9) Certification that the declaration or payment of the dividend or distribution does not violate any of the provisions of Insurance Code Chapter 403 or §841.253, as applicable, and that the amount

of the dividend or distribution declared was calculated based on the amount of cash and the current fair market value of any other property to be paid or distributed.

(10) Signature.

Figure: 28 TAC §7.213(b)(10)

(c) Extraordinary Dividend and Distribution.

(1) State purpose of dividend or distribution.

(2) On request of the commissioner, furnish a copy of directors' resolution declaring dividend and any shareholders resolution supporting the declaration are to be attached to this form.

(3) Effect of declaration.

(A) Give the total amount of dividend or distribution in dollars when so expressed, or if declared in some other terms, the approximate dollar value and identify the exact property in which the dividend or distribution is payable if not cash (include method of valuing the property other than cash).

(B) Explain any difference in treatment and basis with regard to any share of issued and outstanding stock that will not be treated equally in distribution of dividend, excluding treatment of classes of stock.

(C) Explain basis concerning the different treatment in distribution of dividend given by class of stock.

(D) Give number of shares by class to whom proposed dividend is payable, the dividend per share of each class and total amount of dividend by class of stock.

(E) By class of stock, give total amount of each dividend declared, the amount payable per share, and the date of declaration for the five calendar years preceding this notice.

(F) Give the net gain or loss from operations after dividends to policyholders and federal income taxes, excluding capital gains and losses of the Insurer for each of the last five calendar years as reported in the Insurer's annual statement to the department.

(4) Provide a balance sheet, income statement, and cash flow statement for the interim period from the last annual statement to the end of the month preceding the month in which this application is submitted.

(5) Provide the National Association of Insurance Commissioners authorized control level Risk Based Capital Ratio before and after dividend or distribution and projected for year end and the following year end.

(6) Explain any restrictions on the volume of the Insurer's underwritings within the last year or in the immediate future that did not previously exist.

(7) Explain any limitations and reasons for limitations established for geographical underwriting within the last year or in immediate future that did not previously exist.

(8) Describe the existing reinsurance program of Insurer, including limits of retention.

(9) Identify and describe any deviation of more than 10 percent in value of any loans or investments held by Insurer (other than replacement of maturing securities with comparable securities) from that disclosed in your last annual statement.

(10) Signature and certification of the following form is required:

Figure: 28 TAC §7.213(c)(10)

§7.214. *Form F.*

(a) Enterprise Risk Report is required as follows.
Figure: 28 TAC §7.214(a)

(b) The registrant/applicant, to the best of its knowledge and belief, must provide information regarding the following areas that could produce enterprise risk as defined in §7.202 of this title (relating to Definitions), provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

(1) any material developments regarding strategy, internal audit findings, compliance, or risk management affecting the insurance holding company system;

(2) acquisition or disposal of insurance entities and reallocation of existing financial or insurance entities within the insurance holding company system;

(3) any changes of shareholders of the insurance holding company system exceeding 10 percent or more of voting securities;

(4) developments in various investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system;

(5) business plan of the insurance holding company system and summarized strategies for the next 12 months;

(6) identification of material concerns of the insurance holding company system raised by supervisory college, if any, in the last year;

(7) identification of insurance holding company system capital resources and material distribution patterns;

(8) identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

(9) information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should the guarantees be called; and

(10) identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

(c) The registrant/applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the registrant/applicant includes specific references to those areas listed under subsection (b) of this section for which the form provides responsive information. If the registrant/applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the registrant/applicant includes specific references to those areas listed under subsection (b) of this section for which the financial statement provides responsive information.

(d) If the registrant/applicant has not disclosed any information under subsection (b) of this section, the registrant/applicant must include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure under subsection (b) of this section.

(e) As added by §18 of Acts 2011, 82nd Leg., ch. 922 (S.B. 1431), the commissioner of insurance has determined that the National

Association of Insurance Commissioners has completed an enterprise risk form and has proposed a master confidentiality agreement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301777

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: May 26, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-6327



28 TAC §§7.211 - 7.213

The Texas Department of Insurance (TDI) adopts the repeal of 28 Texas Administrative Code §§7.211 - 7.213, concerning Form C, Disclaimer of Control or Affiliation filed with TDI; Form D, Notice of Declaration of Extraordinary Dividend; and Form E, Statement Regarding the Exemption from Approval of the Acquisition of Control of a Domestic Insurer, respectively. The repeal is adopted without changes to the proposal published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10121).

REASONED JUSTIFICATION. The repeal of §§7.211 - 7.213 is necessary to implement statutory changes from SB 1283 and SB 1284 (79th Legislature, 2005), SB 1542 (80th Legislature, 2007), and SB 1431 (82nd Legislature, 2011); adopt rules consistent with the National Association of Insurance Commissioners (NAIC) model regulation forms, as applicable; and delete obsolete forms. In addition, the repeal permits the simultaneous adoption of new §§7.211 - 7.213, concerning Form C, Summary of Material Changes to a Registration Statement; Form D, Prior Notice of a Transaction; and Form E, Notice of Ordinary and Extraordinary Dividends and Other Distributions. The content contained in Forms C and D is relocated within the holding company rules while the content in Form E is obsolete. As a result, the repealed sections are no longer necessary. In conjunction with the adopted repeal, the adoption of new §§7.11 - 7.213 is also published in this issue of the *Texas Register*.

HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in the removal of obsolete forms and the relocation of form content to other sections of the holding company rules and permit the adoption of new §§7.211 - 7.213. TDI adopts the repeal of §7.211, Form C, concerning disclaimer filings. The disclaimer content is relocated in narrative format in adopted §7.203(m), to be consistent with NAIC disclaimer language, and is published in this issue of the *Texas Register*. The repeal is necessary to adopt NAIC model Form C, Summary of Material Changes to a Registration Statement, and implement statutory changes from Insurance Code §823.055. TDI adopts the repeal of §7.212, Form D, concerning Notice of Declaration of Extraordinary Dividend, and relocates the information to adopted §7.213, Form E, Notice of Ordinary and Extraordinary Dividends and Distributions. The repeal is necessary to adopt NAIC model Form D, Prior Notice of a Transaction, and implement statutory changes from Insurance Code §§823.101, 823.102, and 823.103. TDI adopts the repeal of §7.213, Form E, concerning the Exemption from Approval of the Acquisition of Control of a Domestic

Insurer, because the exemption form is obsolete. The exemption remains pursuant to Insurance Code §823.164 and the entity files an exemption by letter instead. Adopted §7.213, Form E, includes Notice of Ordinary and Extraordinary Dividends and Other Distributions, which incorporates ordinary dividends from the HCDividend form on the TDI website and extraordinary dividends from Form D.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Insurance Code §§823.012(a), 823.055(c), 823.059(c), 823.101(b-1), 823.103(a)(4), 823.154(a)(3), 36.001, and 36.004. Article 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter. Section 823.055(c) provides that an insurer required to file an annual registration statement shall also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule. Section 823.059(c) provides that the commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter. Section 823.101(b-1) provides that an agreement, including an agreement for cost sharing, services, or management, must include all provisions required by rule of the commissioner. Section 823.103(a)(4) applies only to any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or modification of an agreement previously filed under this section. Section 823.154(a)(3) provides that if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the NAIC or adopted by the commissioner by rule. Section 843.051(g) provides that the commissioner may adopt rules as necessary to implement this subsection in a way that reflects the nature of HMOs, health care plans, or evidences of coverage. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Section 36.004 provides that except as provided by §36.005, the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the NAIC, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2013.

TRD-201301778

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: May 26, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-6327

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.102

The Comptroller of Public Accounts adopts an amendment to §3.102, concerning applications, definitions, permits, and reports, without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1952).

The amendment is adding statute conforming language to the definition of a distributor in subsection (a)(8). Minor changes are made to subsection (a)(5) and (6) to improve the readability.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §154.001(7)(C).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2013.

TRD-201301713

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: May 21, 2013

Proposal publication date: March 22, 2013

For further information, please call: (512) 475-0387

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES

SUBCHAPTER J. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)--INTELLECTUAL DISABILITY SERVICES

40 TAC §§5.451 - 5.458

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter J, §§5.451 - 5.458, concerning preadmission screening and resident review (PASARR) for intellectual disability services, in Chapter 5, Provider Clinical Responsibilities--Intellectual Disability Services, without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1854).

The repeal is adopted to remove outdated rules from the DADS rule base. New rules regarding the PASARR program are adopted elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301750

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: May 24, 2013

Proposal publication date: March 15, 2013

For further information, please call: (512) 438-4162



CHAPTER 17. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new Chapter 17, Preadmission Screening and Resident Review (PASRR), consisting of Subchapter A, §§17.101 - 17.104, concerning general provisions; Subchapter B, §§17.201 - 17.203, concerning screening, expedited admission, and resident review; Subchapter C, §§17.301 - 17.303, concerning responsibilities; and Subchapter D, §17.401, concerning vendor payment, with changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1128).

The new sections are adopted to address issues identified by the Centers for Medicare and Medicaid Services (CMS) regarding the Preadmission Screening and Resident Review (PASRR) program and to redesign the PASRR program in general. In December 2009, the Health and Human Services Commission

(HHSC) received a letter from CMS outlining areas in which the current PASRR program in Texas does not appear to meet federal requirements. Specifically, CMS cited three issues. First, PASRR Level II evaluations must include a recommendation of specific specialized services needed by an individual prior to admission to a nursing facility. Second, nursing facility staff must not perform PASRR Level II evaluations. Third, the state must describe its resident review processes, specifically the roles and responsibilities of the state mental health and intellectual disability authorities, when the individual has a significant change in status.

The agency deleted definitions of "dementia," "disposition," "ongoing services," and "readmission," because the terms are not used in the chapter.

The agency also specifies that specialized services must be initiated within 30 days after those services are identified in the comprehensive care plan in the LTC Online Portal, as described in §§17.201(d)(6), 17.202(a)(4)(F), 17.203(f)(2)(F), 17.302(5), and 17.303(12).

Non-substantive editorial changes were made throughout the chapter to improve the clarity of the rule.

DADS received written comments from two licensed nurses, Disability Rights Texas, and Texas Hospital Association. A summary of the comments and the responses follows.

Comment: Concerning the definition of "admitting nursing facility" in §17.102, a commenter recommended substituting "comprehensive care plan" for "specialized services plan."

Response: The agency deleted this definition as the term is not used in the chapter.

Comment: Concerning the definition of "alternate placement" in §17.102, a commenter recommended adding "community" services and "or if an inpatient setting is necessary, then a setting other than a nursing facility."

Response: The agency believes the rule reflects the federal regulations and allows the service coordinator or case manager to locate and secure services, including community services, that the individual desires and to locate appropriate settings other than a nursing facility. No changes were made in response to the comment.

Comment: Concerning the definition of "comprehensive care plan" in §17.102, a commenter referenced 42 CFR §483.136 and recommended adding "in order to ensure the provision of active treatment"; 15 specific domains to be addressed by the plan; and subparagraph "(E) identification of the strengths, needs, preferences, capabilities, and interests of the individual and consideration of ways to meet them in an integrated community setting."

Response: This definition is based on "comprehensive care plan" as defined in §19.101(22) and explained in §19.802 in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification). The plan is based on the federal nursing facility requirement for participation at 42 CFR §483.20(k). 42 CFR §483.136 addresses data collected for and characteristics considered for the PASRR evaluation and determination rather than the nursing facility comprehensive care plan. No changes were made in response to this comment.

Comment: Concerning the definition of "developmental disability" in §17.102, one commenter recommended striking the phrase "As defined in the Developmental Disabilities Assistance

and Bill of Rights Act of 2000, Section 102(8)" and adding to subparagraph (E) "included in 42 U.S.C. §15002."

Response: The agency notes that it uses the term "developmental disability" to mean "related condition," as defined in 42 CFR §435.1010. The definition has been modified to reflect that meaning.

Comment: Concerning the definition of "interdisciplinary team (IDT) meeting" in §17.102, one commenter recommended adding "(A)(iii) service coordinator" and striking "(B)(ii) at the discretion of the local authority" explaining that the service coordinator should always be part of the team, as should any current providers, including specialized services providers.

Response: The agency agrees this definition could be made clearer and has revised this definition to reflect that a representative of the local authority will always be included in the required team members needed for participation in IDT meetings. The agency also clarified that the team will always include a registered nurse from the nursing facility and that the meeting may include other persons specified by the individual, LAR, nursing facility, or local authority as appropriate.

Comment: Concerning the definition of "Level I screening" in §17.102, one commenter recommended substituting "who are suspected of having" for "with an indication of" and adding "and referring those individuals to a local authority."

Response: The agency agrees with the recommended changes in part. The agency agrees to the recommended changes to this definition and has substituted "suspected of having" for "with an indication of" to be consistent with the terminology in the Code of Federal Regulations. The agency made this change throughout the chapter. The agency declines to make the second recommended change. The definition of the Level I screening does not include the referral because that is an action that results from the Level I screening.

Comment: Concerning the definition of "PASRR Level II evaluation" in §17.102, one commenter recommended adding "(1) if an individual's needs can be met in a community setting, or (2) if the individual's needs can be met only through inpatient care, whether a nursing facility or other setting is appropriate, and (3) the specialized services necessary to meet the individual's need" and striking "alternate placement options for an individual and the need for care in a nursing facility or other setting such as an ICF."

Response: The agency believes the current definition addresses the elements that are considered for the Level II evaluation. The definition is not intended to dictate the order of the elements evaluated. No changes were made in response to the comment.

Comment: One commenter recommended adding a definition for "related condition" to clarify that, pursuant to 42 CFR §483.102(b)(3)(ii), PASRR regulations apply equally to individuals with a "related condition" as defined by 42 CFR §435.1010.

Response: The agency declines to make the requested change because the term "related condition" is not used in the chapter. However, the definition of "developmental disability" has been changed to reflect that it means "related condition," as defined in 42 CFR §435.1010.

Comment: Concerning the definition of "respite" in §17.102, one commenter recommended adding "for a period not to exceed 14 days."

Response: The agency has made the suggested change to the definition to reflect that respite services do not exceed 14 days.

Comment: One commenter recommended adding a definition of "service coordinator" to ensure the local authority's responsibilities for oversight and facilitation of the comprehensive care plan are fulfilled by delegation to one individual who assumes responsibility for transition planning and timely provision of services.

Response: The agency agrees and has added definitions of "service coordinator" and "service coordination."

Comment: Concerning the definition of "specialized services" in §17.102, one commenter recommended adding "For individuals with intellectual or developmental disabilities, specialized services means the services which combined with services provided by the nursing facility or other providers, constitutes a program of active treatment. The determination of the need for specialized services for individuals with an intellectual and/or developmental disability must be based upon an assessment." The commenter listed 15 specific domains to be included in the assessment.

Response: The agency believes the definition of specialized services in the proposed PASRR rules is appropriate because it lists the services that the state provides. However, the agency has changed the definition to make it clear which services are available from a nursing facility, which are available to individuals with mental illness, and which are available to individuals with intellectual or developmental disabilities. The revised definition also clarifies that vocational services are not available statewide.

Comment: Concerning §17.103, a commenter requested adding the ability to request a fair hearing to contest the outcome of a Level I determination, the outcome of the PASRR Level II evaluation or a decrease in, termination of, or a failure to provide specialized services.

Response: The agency declines to add the requested language. The Level I screening does not include a determination. The federal regulations do not require the state to offer an appeal of a Level I screening. The agency has modified the rule to clarify the scope of an appeal of a PASRR determination. The rule addresses the appeal of a PASRR determination.

Comment: Concerning §17.103, a commenter requested adding additional information to clarify that a request for a fair hearing does not affect a hospital's ability to discharge an individual pending the hearing.

Response: The rules do not require continued hospital services while a hearing regarding a denial of nursing facility services is pending. No changes were made in response to this comment.

Comment: Concerning §17.104(b), a commenter recommended substituting the term "exempted hospital discharge" for the criteria in subsection (b)(3) and "expedited admission" in subsection (b)(4) and to omit "and evaluation" in subsection (b).

Response: The agency agrees with the requested change in part. The agency agrees to use the term "exempted hospital discharge" because it is a defined term. However, the agency declines to add "expedited admission" to the section because expedited admission is not an exception to the PASRR Level II evaluation; it is a categorical PASRR Level II determination. In addition, the term "evaluation" was replaced with "PASRR determination" because the subsection lists exceptions for a nursing facility to admit someone before having a PASRR Level II evaluation and PASRR determination.

Comment: Concerning §17.201, two commenters stated the seven day time frame to complete and enter the PASRR evaluation is too long. The commenters feel this will backlog hospital emergency rooms and underutilize scarce resources of medical beds without reimbursement in densely populated areas and delay treatment and services for individuals in rural areas.

Response: The agency disagrees with the comment. DADS believe the PASRR process timelines address these concerns. Federal regulations require the PASRR determination to be made 7-9 working days from referral. The preamble to the federal regulations addressed this concern, noting that delays can be minimized in cases where the need for screening is identified at or near the time of hospital admission and requested immediately. The agency also has addressed this concern through the expedited admissions rule. No changes were made in response to this comment.

Comment: Concerning §17.201 a commenter requested a change to the timeframe from 72 hours to 48 hours for completion of the PASRR Level II evaluation. The commenter also suggested a requirement for the local authority to enter the Level I screening and PASRR Level II evaluation into the LTC Online Portal within 96 hours of receiving notice from the hospital.

Response: The agency declines to make the requested change because it believes a local authority requires more than 48 hours to complete a PASRR Level II evaluation. The agency has specified that the local authority must meet with the individual, review medical records, and communicate with collateral contacts within 72 hours after receiving notification from the referring entity. Within five days after receiving notification from the referring entity, the local authority must complete the PASRR Level II evaluation and within seven days after receiving notification from the referring entity, the local authority must enter data from the PASRR Level II evaluation. The agency believes these timelines give a local authority adequate time to meet its responsibilities, while requiring completion of a PASRR Level II evaluation in a timely manner.

Comment: Concerning §17.201(c), a commenter stated that the local authority should remain responsible for ensuring the nursing facility's compliance with the timeline and requested adding a requirement for the local authority to contact the nursing facility directly to expedite resolution of the individual's placement if the nursing facility has not responded within 48 hours of the local authority entering the information into the LTC Online Portal.

Response: A referring entity may contact a nursing facility to inquire about the status of a pending admission. The agency declines to make it a local authority's responsibility to contact a nursing facility under the circumstances described. No changes were made in response to this comment.

Comment: Concerning §17.201, a commenter stated that the failure of a local authority to fulfill its obligations will have an adverse impact on patients and hospitals and requested rules that will address what happens if a local authority does not meet its obligations.

Response: The agency will continue existing local authority survey and audit processes to achieve compliance with program rules. A local authority's failure to perform will be addressed in its contract with DADS. No changes were made in response to the comment.

Comment: Concerning §17.201(b)(2), a commenter requested adding "(1) determine if the individual's needs can be met in a

community setting; or (2) if the individual's needs can be met only through inpatient care, whether a nursing facility or other setting is appropriate; and (3) the specialized services needed to meet the individual's needs." A commenter requested adding "(3) explore the availability of alternative settings taking into consideration all services and programs for which the individual is eligible and based upon the reviewer's knowledge and experience with community services"; and "(4) discuss community alternatives identified in (3) above with the individual and LAR, if any, and explain the benefits and appropriateness of alternative settings."

Response: The agency believes the purpose of the PASRR Level II evaluation is explained in other sections of the rules and in the form that will be used to conduct the evaluation. The agency has, however, made additional changes to clarify the preadmission screening process.

Comment: Concerning §17.201(d)(1) and (2), a commenter requested adding "within 5 days" and "within 10 days".

Response: Time frames for IDT meetings and the comprehensive care plan are stated in §19.801 and §19.802, in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification). The agency has, however, added time frames to subsection (d)(1) and (2) that are consistent with the time frames in Chapter 19 of this title. A similar change was made to §17.202(a)(4) and to §17.203 (f)(2).

Comment: Concerning §17.202, one commenter stated expedited admission categories should be limited to severe physical illness, terminal illness, delirium, or coma. The commenter feels the PASRR evaluation should be completed prior to admission for categories of respite, convalescent care, and emergency protective services.

Response: The agency disagrees with the comment. The expedited admission categories included in the rule are based on the categorical admissions provided for in 42 CFR §483.130(d) and have been approved by CMS. The agency believes the categories are appropriate for expedited admission to ensure these individuals will continue to receive the care necessary to their well-being. No changes were made in response to this comment.

Comment: Concerning §17.202, a commenter requested adding expedited admission criteria for delirium, convalescent care, and respite to subsection (a) to clarify when a hospital can discharge an individual.

Response: The agency has modified the rule to clarify that expedited admission categories of convalescent care, terminal illness, and severe physical illness are addressed in subsection (a). The categories of delirium, emergency protective services, respite, and coma are addressed in subsection (b). The agency also clarified when a referring entity can discharge an individual under subsection (b).

Comment: Concerning §17.202, a commenter stated that for certain categories of expedited admission, such as convalescent care, emergency protective services, or respite, the diversionary intent of PASRR is thwarted by carving out an exception to the general rule that a PASRR Level II evaluation must be done prior to admission to a nursing facility. The commenter also suggested a 72-hour time period from referral for a local authority to complete a PASRR Level II evaluation.

Response: The agency notes that the categories are allowed in federal regulations, are approved by CMS, and are included

to ensure that individuals have access to care necessary for their well-being. However, the agency has amended subsection (a)(2) to make it consistent with §17.201(b).

Comment: Concerning §17.202(a)(3), a commenter requested substituting "local authority" for "nursing facility"; revising subparagraph (A) to require a local authority to check the LTC Online Portal and review the list of specialized services to determine if specialized services can be provided or arranged; striking subparagraph (A)(i); and adding new subparagraph (A)(i) and (ii).

Response: The agency declines to make the change as requested. It appears that the commenter may have been reviewing a different version of the proposed rules than was published; therefore it is difficult to respond to these comments. As published, proposed subsection (a) requires the nursing facility to check the LTC Online Portal to determine if specialized services can be provided or arranged. This is necessary for the nursing facility to determine whether it will admit the individual. There is no clause (i) under §17.202(a)(3)(A) in the proposed rule. The commenter's additions would transfer responsibility for approving admission to the person who completes the PASRR Level II evaluation and determination, which is not the intent of the rule.

Comment: Concerning §17.202(a)(4)(D) and (E), a commenter requested striking "must identify"; adding "provides services of lesser intensity than specialized services," "identified in the comprehensive care plan," and "identifies those services"; and adding "The local authority provides or arranges for the specialized services identified by the IDT and included in the comprehensive care plan."

Response: The commenter may have reviewed a rule draft other than the published proposed rule. The agency declines to add the requested language because §17.202(a)(4) appropriately sets out nursing facility and local authority responsibilities with regard to specialized services. The agency clarified in subparagraph (D) that the nursing facility identifies specialized services for which it is responsible in the comprehensive care plan. The agency declines to add the requested language regarding services of lesser intensity because the PASRR rules are intended to address specialized services resulting from the PASRR Level II evaluation rather than all services delivered to an individual.

Comment: Concerning §17.202(a)(5), a commenter suggested adding "and to ensure the provision of active treatment" at the end of the rule.

Response: The agency declines to add the requested phrase because this provision addresses monitoring of specialized services identified in the comprehensive care plan. There are no additional services to be monitored in this context. The agency revised the rule to clarify that DADS monitors local authority delivery of specialized services to an individual having an intellectual or developmental disability and nursing facility delivery of specialized services and DSHS monitors local authority delivery of specialized services to an individual having mental illness.

Comment: Concerning §17.203(c)(1), a commenter requested adding "or is determined appropriate for an alternate placement unless the individual objects."

Response: The agency declines to add the requested language. The individual will be informed about alternate placement and the rule provides for active individual choice and local authority action for alternate placement.

Comment: Concerning §17.203(e)(1) and (2), a commenter requested that the local authority make the determination that the nursing facility can provide or arrange for recommended specialized services.

Response: The agency declines to make the requested change, as each nursing facility must determine whether it can meet an individual's needs and admit the individual.

Comment: Concerning §17.203(e)(2)(A) and (B), a commenter requested adding a 5-day time frame for a nursing facility to contact the local authority to participate in the IDT and adding a 10-day time frame for IDT participation.

Response: As previously stated in the response to a comment about §17.201(b)(1) and (2), the agency has added time frames in subparagraphs (A) and (B) that are consistent with the time frames in Chapter 19.

Comment: Concerning §17.203(e)(2)(C), (D), and (E), a commenter suggested revising the structure of subparagraph (C) and adding "transition services"; adding "services of lesser intensity than specialized services and the specialized services identified in the comprehensive care plan" to subparagraph (D); and requiring the local authority to provide or arrange for transition services and specialized services rather than the nursing facility and the local authority providing or arranging for specialized services in subparagraph (E).

Response: The agency declines to make the requested change to subparagraph (C) because the nursing facility must include the specialized services in the nursing facility comprehensive care plan. The agency declines to make the requested changes to subparagraphs (D) and (E) because the rule appropriately sets out nursing facility and local authority responsibilities with regard to specialized services.

Comment: Concerning §17.203(e)(3), a commenter suggested adding "provision of specialized services and non-specialized services provided by the nursing facility and any other providers to ensure that those services, taken together, constitute a program of active treatment."

Response: The agency declines to add the requested phrase because this provision addresses monitoring of specialized services identified in the comprehensive care plan. There are no additional services to be monitored in this context. The agency revised the rule to clarify that DADS monitors local authority delivery of specialized services to an individual having an intellectual or developmental disability and nursing facility delivery of specialized services, and DSHS monitors local authority delivery of specialized services to an individual having mental illness.

Comment: Concerning §17.301(1)(A), a commenter requested the Level 1 screening be completed by the local authority when the referring entity is a family member or law enforcement.

Response: The nursing facility is the first point of contact for the referring entity. It is less confusing for the nursing facility to complete the Level I screening rather than directing the referring entity to contact the local authority. No changes were made in response to the comment.

Comment: Concerning §17.302(1) and (6), a commenter reiterated the comment on §17.202 regarding limits to expedited admission categories.

Response: The expedited admission categories included in the rule are based on the categorical admissions provided for in 42 CFR §483.130(d) and have been approved by CMS. The agency

believes the categories are appropriate for expedited admission to ensure these individuals will continue to receive the care necessary to their well-being. No changes were made in response to this comment.

Comment: Concerning §17.303, a commenter requested a change to the timeframe from 72 hours to 48 hours for completion of the PASRR Level II evaluation. The commenter also suggested a requirement for the local authority to enter the Level I screening and PASRR Level II evaluation into the LTC Online Portal within 96 hours of receiving notice from the hospital.

Response: The agency declines to make the requested change because it believes a local authority requires more than 48 hours to complete a PASRR Level II evaluation. The agency has specified that the local authority must meet with the individual review medical records, and communicate with collateral contacts within 72 hours after receiving notification from the referring entity or LTC Online Portal. Within five days after receiving notification from the referring entity, the local authority must complete the PASRR Level II evaluation and within seven days after receiving notification from the referring entity or LTC Online Portal, the local authority must enter data from the PASRR Level II evaluation. The agency believes these timelines give a local authority adequate time to meet its responsibilities, while requiring completion of a PASRR Level II evaluation in a timely manner.

Comment: Concerning §17.303(1) and (2) a commenter recommended re-numbering paragraphs for accuracy. A commenter also recommended adding that the PASRR Level II evaluation assessment is to be completed prior to admission except as noted in §17.104 and that the Level I screening can be completed by the local authority if the referring entity is a family member or law enforcement.

Response: The paragraphs are numbered correctly. The requirement for completing the PASRR Level II evaluation prior to admission in §17.303(1) is in §17.201(b)(1) and (2). Additionally, because the nursing facility is the first point of contact for the referring entity, the agency believes the nursing facility should complete the Level I screening rather than directing the referring entity to contact the local authority. No changes were made in response to the comment.

Comment: Concerning §17.303(4) and (6), a commenter recommended deleting expedited admission categories of respite, convalescent care, and delirium and adding that the local authority make a determination of appropriateness for alternate placement if not otherwise opposed by the individual or LAR.

Response: The expedited admission categories included in the rule are based on the categorical admissions provided for in 42 CFR §483.130(d) and have been approved by CMS. The agency believes the categories are appropriate for expedited admission to ensure these individuals will continue to receive the care necessary to their well-being. The rule appropriately sets out the need to make a referral for alternate placement. No changes were made in response to the comment.

Comment: Concerning §17.303, a commenter suggested new paragraphs (7) and (8) describing all activities of the alternate placement discussion and transition and adding a requirement for integration of an individual's comprehensive care plan and facilitation of transition planning.

Response: The agency notes that local authority responsibilities are addressed in Subchapter B of this chapter. Comprehensive care plan and nursing facility services are addressed in Chapter

19 of this title. However, the agency revised the rule by adding a requirement that the local authority facilitate transition planning.

Comment: Concerning §17.303(11), a commenter recommended adding "identified by the IDT."

Response: The IDT determines specialized services included in the comprehensive care plan and this information will be entered in the LTC Online Portal. No changes were made in response to the comment.

Comment: A commenter requested that the agency provide a 6-month implementation period from the date the rules are adopted and final for training, linkage development, and other steps necessary to implement the rules.

Response: The agencies will provide training to referring entities, local authorities, and nursing facilities prior to the implementation date to ensure they are aware, informed, and prepared to institute the program changes. No changes were made in response to the comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§17.101 - 17.104

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§17.101. Description of PASRR.

(a) Preadmission Screening and Resident Review (PASRR) is a federally mandated program. Each state is required to comply with Code of Federal Regulations, Title 42, Part 483, Subpart C, to ensure that any individual seeking admission into a Medicaid-certified nursing facility or currently residing in such a facility is screened and evaluated for mental illness, intellectual disability, and developmental disabilities.

(b) The purpose of the screening and evaluation is:

(1) to determine whether an individual identified as having mental illness, intellectual disability, or developmental disability needs nursing facility services;

(2) to identify alternate placement options when applicable; and

(3) to identify specialized services that may benefit the individual.

(c) A Medicaid-certified nursing facility must not admit an individual without a completed PASRR Level I screening form.

(d) If an individual is identified as having mental illness, intellectual disability, or developmental disability, a Medicaid-certified nursing facility must not admit the individual without a complete PASRR Level II evaluation and PASRR determination except as allowed by this chapter.

§17.102. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) **Alternate placement--**Assistance provided to a nursing facility resident or an individual seeking admission to a nursing facility by a local authority service coordinator or local authority case manager to locate and secure services chosen by the resident or LAR that meet the resident's basic needs in a setting other than a nursing facility. Assistance includes the identification of specific services and supports available through alternate resources for which the resident may be eligible and an explanation of the possible consequences of selecting an alternate service.

(2) **Collateral contact--**A person who is knowledgeable about an individual's situation and who supports or corroborates information provided by the individual. Communication with a collateral contact may be made by telephone, by mail, or face-to-face.

(3) **Coma--**A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(4) **Comprehensive care plan--**A nursing facility plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet a resident's needs and developed for the resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, consistent with a physician's prescribed plan of care, to assist a resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(5) **Convalescent care--**A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery that does not exceed 120 days.

(6) **DADS--**The Texas Department of Aging and Disability Services. A state agency that provides long-term services and supports for people who are aging and for people with intellectual and physical disabilities. DADS also licenses and regulates providers of these services. DADS is the state authority for intellectual and developmental disabilities for the purposes of the PASRR program.

(7) **Delirium--**A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(8) **Developmental disability--**A related condition as defined in Code of Federal Regulations (CFR) Title 42 §435.1010.

(9) **DSHS--**The Texas Department of State Health Services. A state agency that provides state-operated health care services including hospitals, health centers, and health agencies. DSHS is the state mental health authority for the purpose of the PASRR program.

(10) **Emergency protective services--**Services that are furnished by DADS or the Department of Family and Protective Services (DFPS) to an elderly or disabled person who has been determined to be in a state of abuse, neglect, or exploitation if DADS or DFPS determines that the services are necessary to prevent the elderly or dis-

abled person from returning to a state of abuse, neglect, or exploitation. These services may include case management, and arranging for psychiatric and health evaluations, home care, day care, social services, health care, respite services, and other services consistent with this chapter.

(11) **Exempted hospital discharge--**A hospital discharge that occurs when a physician has certified that an individual who is suspected of having a mental illness or intellectual or developmental disability is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(12) **Expedited admission--**A nursing facility admission that occurs when an individual is:

(A) suspected of having mental illness, intellectual disability, or developmental disability; and

(B) meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(13) **Interdisciplinary team (IDT) meeting--**A meeting of health professionals, paraprofessionals, and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations for whether the individual is best served in a facility or in a community setting.

(A) Team membership always includes:

(i) the individual;

(ii) the individual's LAR, if any;

(iii) a registered nurse from the nursing facility with responsibility for the resident; and

(iv) a representative of the local authority.

(B) Other participants in IDT meetings may include:

(i) other concerned persons whose inclusion is requested by the individual or the LAR;

(ii) any other person specified by the individual or LAR, nursing facility, or local authority, as appropriate, who is professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental illness, intellectual disability, or developmental disability; and

(iii) if the individual is school eligible, representatives of the appropriate school district.

(14) **Intellectual disability--**Formerly referred to as mental retardation, as defined in the Code of Federal Regulations (CFR) Title 42 §483.102(b)(3).

(15) **Legally authorized representative (LAR)--**The parent of a minor child, the legal guardian, or the surrogate decision maker of an individual seeking admission to a nursing facility or a resident of a nursing facility.

(16) **Level I screening--**The process of identifying an individual suspected of having mental illness, intellectual disability, or developmental disability who requires a PASRR Level II evaluation.

(17) **Local authority--**An entity to which the Health and Human Services Commission delegates authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to individuals with

mental illness, or intellectual disability services to individuals with an intellectual or developmental disability in one or more local service areas.

(18) Long Term Care (LTC) Online Portal--A web-based application of the Texas Medicaid and Healthcare Partnership used by Medicaid providers to submit forms, screenings, evaluations and the long term services and supports Medicaid identification section of the minimum data set (MDS) assessment.

(19) Minimum data set (MDS) assessment--A standardized collection of demographic and clinical information that describes an individual's overall condition, which a licensed nursing facility in Texas is required to submit for a resident admitted into the facility.

(20) Mental illness--Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(21) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(22) PASRR--Preadmission screening and resident review.

(23) PASRR determination--A decision made by DADS, DSHS, or their designee in accordance with Chapter 19, Subchapter Y of this title (relating to Medical Necessity Determinations) whether an individual requires the level of care provided in a nursing facility and whether the individual has a need for specialized services, based on information in the PASRR Level II evaluation. A report documenting the determination is sent to the individual and LAR.

(24) PASRR Level II evaluation--A face-to-face evaluation performed by a local authority at the location of the referring entity or nursing facility to assess an individual's need for specialized services, alternate placement options for the individual, and the need for care in a nursing facility or other setting, such as an intermediate care facility for individuals with an intellectual disability or related conditions.

(25) Referring entity--The entity that refers an individual to a nursing facility, which includes a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(26) Resident--An individual who resides in a Medicaid-certified nursing facility and receives services provided by professional nursing personnel of the facility.

(27) Resident review--A process that determines if a resident with mental illness, intellectual disability or developmental disability requires:

- (A) nursing facility services;
- (B) specialized services; or
- (C) alternate placement.

(28) Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(29) Selected nursing facility--A nursing facility identified by an individual, a referring entity, or a local authority as a potential care setting for the individual.

(30) Service coordinator--An employee of a local authority who provides service coordination.

(31) Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community

participation acceptable to the individual (and LAR on the individual's behalf) as defined in §2.553 of this title (relating to Definitions).

(32) Severe physical illness--An illness resulting in ventilator dependence or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(33) Specialized services--Support services in addition to nursing facility services that are identified through the PASRR Level II evaluation and PASRR determination process and are provided to individuals who are Medicaid eligible and have mental illness, intellectual disability, or developmental disability.

(A) The following specialized services are available from a nursing facility:

(i) physical therapy, occupational therapy, and speech therapy, which require an evaluation by a licensed therapist; and

(ii) customized adaptive aids, which require an evaluation by a physical therapist or occupational therapist.

(B) The following specialized services are available from a local authority for individuals who have intellectual or developmental disabilities:

(i) service coordination, which includes alternate placement; and

(ii) vocational training, in some areas of the state.

(C) The specialized services that are available from a local authority for individuals with mental illness are defined in 25 TAC Chapter 412, Subchapter I (relating to MH Case Management), including alternate placement, and 25 TAC Chapter 419, Subchapter L (relating to Mental Health Rehabilitative Services).

(34) Surrogate decision maker (SDM)--An actively involved family member of an individual who has been identified by an IDT as the SDM in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent on behalf of the individual.

(35) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course, which is documented by a physician's certification in the individual's medical record maintained by a nursing facility.

§17.103. Fair Hearing Process.

(a) An individual, or an individual's LAR, responsible party, or SDM who is not in agreement with a PASRR determination that the individual does or does not require a nursing facility level of care may request a fair hearing to appeal the determination in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(1) If the hearing officer finds that the individual requires a nursing facility level of care, a nursing facility may admit the individual immediately. If the individual meets all other eligibility requirements, the facility may receive vendor payments.

(2) If the hearing officer finds that the individual does not require a nursing facility level of care, the nursing facility must not admit the individual.

(b) An individual, or an individual's LAR, responsible party, or SDM who is not in agreement with a denial of specialized services

may request a fair hearing to appeal the denial in accordance with 1 TAC Chapter 357, Subchapter A.

(1) If the hearing officer reverses the denial, the nursing facility or local authority, as applicable, must provide the service as outlined in the original specialized services request.

(2) If the hearing officer sustains the denial, the nursing facility or local authority, as applicable, must not provide the service outlined in the original request.

§17.104. Exceptions to PASRR Level II Evaluations and PASRR Determinations.

(a) Except as provided in subsection (b) of this section, a nursing facility must not admit an individual who has not had a PASRR Level II evaluation and PASRR determination performed before admission.

(b) A nursing facility may admit an individual who has not had a PASRR Level II evaluation and PASRR determination performed if the individual:

(1) has a Level I screening that does not indicate that the individual has an intellectual disability, developmental disability, or mental illness;

(2) is admitted directly from a hospital after receiving acute inpatient care at the hospital and the individual was a resident of the nursing facility immediately before hospitalization;

(3) is admitted as an exempted hospital discharge;

(4) has a terminal illness as defined for hospice purposes in Code of Federal Regulations, Title 42, §418.3; or

(5) has not had an interruption in continuous nursing facility residence other than for acute care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301755

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Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 438-4162



SUBCHAPTER B. SCREENING, EXPEDITED ADMISSION, AND RESIDENT REVIEW

40 TAC §§17.201 - 17.203

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code,

§161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§17.201. Preadmission Screening Process.

(a) Except as provided in §17.301 of this chapter (relating to Referring Entity Responsibilities), a referring entity must:

(1) complete a Level I screening when an individual is seeking admission into a nursing facility;

(2) notify the local authority if an individual is suspected of having mental illness, intellectual disability, or developmental disability and is seeking admission into a nursing facility; and

(3) provide a copy of the completed Level I screening form to the local authority for an individual who is suspected of having mental illness, intellectual disability, or developmental disability.

(b) The local authority must:

(1) within 72 hours after receiving notification from the referring entity:

(A) travel to the referring entity site and meet face-to-face with the individual; and

(B) review the individual's medical records and communicate with collateral contacts, as needed; and

(2) within five days after receiving notification from the referring entity, complete the PASRR Level II evaluation; and

(3) within seven days after receiving notification from the referring entity, enter the data from the PASRR Level II evaluation in the LTC Online Portal that documents:

(A) an assessment of the individual's need for care in a nursing facility and nursing facility options;

(B) a discussion of the individual's alternate placement options; and

(C) recommended specialized services, based on the PASRR Level II evaluation.

(c) The nursing facility identified on the LTC Online Portal must:

(1) check the LTC Online Portal for the Level I screening and PASRR Level II evaluation; and

(2) document in the LTC Online Portal whether the individual's needs can be met in the facility.

(d) The nursing facility and the local authority must take the actions described in this subsection after the individual has been admitted to the nursing facility.

(1) The nursing facility contacts the local authority immediately after admission to schedule an IDT meeting to discuss specialized services.

(2) The local authority and nursing facility participate in the IDT meeting within 14 days after admission.

(3) The nursing facility includes the specialized services agreed to by the individual or LAR in the comprehensive care plan.

(4) The nursing facility identifies the specialized services for which it is responsible in the comprehensive care plan in the LTC Online Portal.

(5) The nursing facility and local authority provide specialized services to the individual as identified in the comprehensive care plan.

(6) A specialized service must be initiated within 30 days after the date that the service is identified in the comprehensive care plan in the LTC Online Portal.

(e) DADS monitors, in accordance with an individual's comprehensive care plan:

(1) a local authority's provision of specialized services to an individual with an intellectual or developmental disability; and

(2) a nursing facility's provision of specialized services.

(f) DSHS monitors a local authority's provision of specialized services to an individual with mental illness.

(g) In compliance with 42 CFR §483.122, when a preadmission screening has not been completed prior to admission, federal financial participation (FFP) is available only for services furnished after the PASRR Level II evaluation and PASRR determination have been completed and submitted in the LTC Online Portal.

§17.202. Expedited Admission Process.

(a) A referring entity must notify the nursing facility in the LTC Online Portal of an individual whose Level I screening indicates that the individual meets the criteria for the convalescent care, terminal illness, or severe physical illness category, at which point the individual may be discharged from the referring entity to the nursing facility for care.

(1) The nursing facility must:

(A) validate that the individual meets the criteria for the convalescent care, terminal illness, or severe physical illness category;

(B) enter the Level I screening in the LTC Online Portal; and

(C) initiate admission activities.

(2) If the Level I screening indicates the individual has mental illness, intellectual disability, or developmental disability, the LTC Online Portal generates an automated notification to the local authority and the local authority must:

(A) within 72 hours after receiving notification from the LTC Online Portal;

(i) travel to the nursing facility and meet face-to-face with the individual; and

(ii) review the individual's medical records and communicate with collateral contacts, as needed;

(B) within five days after receiving notification from the LTC Online Portal, complete the PASRR Level II evaluation; and

(C) within seven days after receiving notification from the LTC Online Portal, enter data from the PASRR Level II evaluation in the LTC Online Portal that documents:

(i) an assessment of the individual's need for continued care in a nursing facility and nursing facility options;

(ii) a discussion of the individual's alternate placement options; and

(iii) recommended specialized services, based on the PASRR Level II evaluation.

(3) After the PASRR Level II evaluation is available on the LTC Online Portal, the nursing facility must check the LTC Online Por-

tal to review the list of specialized services to determine if it can provide or arrange for the specialized services for which it is responsible.

(A) If the nursing facility determines that it cannot provide or arrange for the specialized services, the nursing facility documents this decision in the LTC Online Portal. The local authority must identify with the individual additional nursing facilities and document those facilities on the individual's Level I screening in the LTC Online Portal.

(B) If the nursing facility can provide or arrange for the specialized services, the nursing facility certifies the provision and arrangement of specialized services recommended in the PASRR Level II evaluation in the LTC Online Portal and completes the MDS assessment within 14 days after the date the individual is admitted to the nursing facility.

(4) The nursing facility and the local authority must take the actions described in this paragraph after the individual is admitted to the nursing facility.

(A) The nursing facility contacts the local authority immediately after admission to schedule an IDT meeting to discuss specialized services.

(B) The local authority and nursing facility participate in the IDT meeting within 14 days after admission.

(C) The nursing facility includes the specialized services agreed to by the individual or LAR in the comprehensive care plan.

(D) The nursing facility identifies the specialized services for which it is responsible in the comprehensive care plan in the LTC Online Portal.

(E) The nursing facility and local authority provide specialized services to the individual as identified in the comprehensive care plan.

(F) A specialized service must be initiated within 30 days after the date that the service is identified in the comprehensive care plan in the LTC Online Portal.

(5) DADS monitors, in accordance with an individual's comprehensive care plan:

(A) a local authority's provision of specialized services to an individual with an intellectual or developmental disability; and

(B) a nursing facility's provision of specialized services.

(6) DSHS monitors a local authority's provision of specialized services to an individual with mental illness.

(b) If an individual's Level I screening indicates that the individual meets the criteria for the delirium, emergency protective services, respite, or coma category, the referring entity may discharge the individual to a nursing facility and the nursing facility:

(1) may admit the individual;

(2) must enter data from the Level I screening in the LTC Online Portal; and

(3) must cooperate with the resident review process.

§17.203. Resident Review Process.

(a) A local authority must conduct a PASRR Level II evaluation if a resident is suspected of having mental illness, intellectual disability, or developmental disability and:

(1) experiences a significant change in status as determined by the MDS Significant Change in Status Assessment Form, including a resident who transfers to another nursing facility;

(2) is admitted under the criteria for the delirium, emergency protective services, or respite category;

(3) is admitted under the criteria for the coma category and an MDS Significant Change in Status Assessment Form indicates the resident is no longer in a coma;

(4) is admitted as an exempted hospital discharge and has exceeded the allowed 30-day stay in the nursing facility; or

(5) is determined by a nursing facility, DADS, or DSHS to need a resident review for any other reason.

(b) The LTC Online Portal generates an automated notification to the local authority within 7-14 days after the resident meets the criteria for resident review.

(c) The local authority must:

(1) within 72 hours after receiving notification from the LTC Online Portal:

(A) travel to the nursing facility and meet face-to-face with the individual; and

(B) review the individual's medical records and communicate with collateral contacts, as needed;

(2) within five days after receiving notification from the LTC Online Portal, complete the PASRR Level II evaluation; and

(3) within seven days after receiving notification from the LTC Online Portal, enter data from the PASRR Level II evaluation in the LTC Online Portal that documents:

(A) an assessment of the individual's need for continued care in a nursing facility and nursing facility options;

(B) a discussion of the individual's alternate placement options; and

(C) recommended specialized services, based on the PASRR Level II evaluation.

(d) If a resident requests alternate placement during the PASRR Level II evaluation, the local authority must make the referral for alternate placement.

(e) If the setting a resident was referred to for alternate placement cannot admit the resident, the resident review screening process continues as described in subsection (f) of this section.

(f) The nursing facility must check the LTC Online Portal for the PASRR Level II evaluation and review the list of recommended specialized services.

(1) If the nursing facility determines that it cannot provide or arrange for the specialized services, the nursing facility must assist the resident with the transfer process to another facility or alternate setting.

(2) If the nursing facility can provide or arrange for the specialized services, the nursing facility and the local authority must take the actions described in this paragraph.

(A) The nursing facility contacts the local authority immediately after the nursing facility certifies provision and arrangement of specialized services recommended in the PASRR Level II evaluation in the LTC Online Portal to schedule an IDT meeting to discuss specialized services.

(B) The local authority and nursing facility participate in the IDT meeting within 14 days after the date that the nursing facility certifies provision and arrangement of specialized services recommended in the PASRR Level II evaluation in the LTC Online Portal.

(C) The nursing facility includes the specialized services agreed to by the resident or the resident's LAR in the comprehensive care plan.

(D) The nursing facility identifies the specialized services for which it is responsible in the comprehensive care plan in the LTC Online Portal.

(E) The nursing facility and local authority deliver specialized services to the resident as identified in the comprehensive care plan.

(F) A specialized service must be initiated within 30 days after the date that the service is identified in the comprehensive care plan in the LTC Online Portal.

(g) DADS monitors, in accordance with an individual's comprehensive care plan:

(1) a local authority's provision of specialized services to an individual with an intellectual or developmental disability; and

(2) a nursing facility's provision of specialized services.

(h) DSHS monitors in accordance with an individual's comprehensive care plan, a local authority's provision of specialized services to an individual with mental illness.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301754

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: May 24, 2013

Proposal publication date: February 22, 2013

For further information, please call: (512) 438-4162



SUBCHAPTER C. RESPONSIBILITIES

40 TAC §§17.301 - 17.303

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§17.301. *Referring Entity Responsibilities.*

A referring entity must ensure the following activities are completed before an individual is admitted to a nursing facility:

(1) complete the Level I screening for an individual seeking admission into a nursing facility, unless:

(A) the referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source, such as law enforcement, in which case the nursing facility may complete the Level I screening; or

(B) the individual is being admitted to the same facility in which the individual resided prior to hospitalization, in which case the nursing facility may complete the Level I screening;

(2) contact the nursing facilities selected by the individual or LAR to notify the facilities of the individual's interest in admission;

(3) provide the completed Level I screening to the selected nursing facility for an individual meeting the expedited admission criteria, exempted hospital discharge, or an individual who is not suspected of having mental illness, intellectual disability, or developmental disability;

(4) contact the local authority and request a PASRR Level II evaluation for an individual suspected of having mental illness, intellectual disability, or developmental disability, who is seeking admission to a nursing facility through the preadmission process described in §17.201 of this chapter (relating to Preadmission Screening Process); and

(5) provide the completed Level I screening to the local authority for an individual suspected of having mental illness, intellectual disability, or developmental disability for individuals who are admitted through the preadmission process.

§17.302. *Nursing Facility Responsibilities.*

A nursing facility must:

(1) complete the Level I screening and enter the Level I screening into the LTC Online Portal for an individual seeking admission to the nursing facility if:

(A) the individual meets the criteria for the expedited admission process described in §17.202 of this chapter (relating to Expedited Admission Process);

(B) the referring entity is one of the entities described in §17.301(1)(A) of this subchapter (relating to Referring Entity Responsibilities); or

(C) the individual is described in §17.301(1)(B) of this subchapter;

(2) check the LTC Online Portal for the recommended list of specialized services in the individual's PASRR Level II evaluation;

(3) coordinate with the local authority to schedule an IDT meeting to discuss the individual's recommended specialized services;

(4) participate in the IDT meeting;

(5) initiate the delivery of specialized services identified in the LTC Online Portal for which the nursing facility is responsible within 30 days after the specialized services are added to the comprehensive care plan; and

(6) allow representatives of the office of the State Long-Term Care Ombudsman and representatives of Disability Rights Texas to counsel and inform residents of their rights and options related to PASRR.

§17.303. *Local Authority Responsibilities.*

A local authority must:

(1) enter the Level I screening completed by the referring entity in the LTC Online Portal for an individual who is suspected of having mental illness, intellectual disability, or developmental disability seeking admission to a nursing facility under the preadmission process;

(2) complete a face-to-face PASRR Level II evaluation with the individual and in coordination with the LAR;

(3) submit the PASRR Level II evaluation on the LTC Online Portal within seven days after receiving notification of the need for a PASRR Level II evaluation from the referring entity or LTC Online Portal;

(4) coordinate with the nursing facility to complete the PASRR Level II evaluation for an individual admitted to the nursing facility in accordance with §17.202 of this chapter (relating to Expedited Admission Process);

(5) coordinate with the nursing facility to complete the PASRR Level II evaluation during the resident review process described in §17.203 of this chapter (relating to Resident Review Process) after receiving notification on the LTC Online Portal;

(6) refer an individual for alternate placement, when requested by the individual or individual's LAR during the PASRR Level II evaluation;

(7) facilitate transition planning and monitor the individual's transition to alternate placement;

(8) cooperate with the nursing facility to schedule an IDT meeting to discuss specialized services;

(9) participate in the IDT meeting;

(10) document in the LTC Online Portal that participation in the IDT meeting has taken place;

(11) document in the LTC Online Portal the specialized services that have been agreed to in the comprehensive care plan;

(12) initiate delivery of the specialized services for which the local authority is responsible within 30 days after the specialized services are identified in the comprehensive care plan in the LTC Online Portal;

(13) identify with the individual additional nursing facilities and document those facilities on an individual's Level I screening in the LTC Online Portal;

(14) if selected nursing facility options have been exhausted, check the Level I screening in the LTC Online Portal for an individual's additional nursing facility options;

(15) inform the referring entity of the individual's alternate placement options; and

(16) enter the residential placement of the individual on the Level I screening in the LTC Online Portal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301753

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 24, 2013
Proposal publication date: February 22, 2013
For further information, please call: (512) 438-4162



SUBCHAPTER D. VENDOR PAYMENT

40 TAC §17.401

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§17.401. Reimbursement for PASRR Level II Evaluation.

(a) A local authority conducts, under the terms of the contract with DADS, the PASRR Level II evaluation of each individual with a Level I screening indicating the individual has or is suspected of having mental illness, intellectual disability, or developmental disability.

(b) A local authority must complete the PASRR Level II evaluation before billing DADS.

(c) DADS reimburses the local authority, using the reimbursement rate, to do the following activities when completing a PASRR Level II evaluation:

(1) call the referring entity or nursing facility to schedule the PASRR Level II evaluation;

(2) review the individual's medical records;

(3) meet face-to-face with the individual;

(4) meet face-to-face with the individual's LAR or communicate with the LAR by telephone if the LAR is not able to meet in person;

(5) communicate with collateral contacts as necessary;

(6) obtain additional information needed to complete the PASRR Level II evaluation;

(7) enter the PASRR Level II evaluation into the LTC Online Portal; and

(8) participate in the individual's IDT meeting to discuss and arrange for the delivery of the individual's specialized services.

(d) The reimbursement rate that DADS pays to a local authority for a PASRR Level II evaluation includes travel costs associated with completing the PASRR Level II evaluation. DADS does not pay any additional amounts for travel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301752
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 24, 2013
Proposal publication date: February 22, 2013
For further information, please call: (512) 438-4162



CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER Z. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)

40 TAC §19.2500

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §19.2500, concerning preadmission screening and resident review (PASARR), in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1136).

The repeal is adopted to remove the existing PASARR rules from 40 TAC Chapter 19.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2013.

TRD-201301751
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 24, 2013
Proposal publication date: February 22, 2013
For further information, please call: (512) 438-4162

REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Joint Financial Regulatory Agencies

Title 7, Part 8

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") file this notice of intention to review and consider the following chapters of Texas Administrative Code, Title 7, Part 8, in their entirety, for readoption, revision, or repeal, as required by Texas Government Code, §2001.039:

Chapter 151 (relating to Home Equity Lending Procedures), comprised of §§151.1 - 151.8 and

Chapter 153 (relating to Home Equity Lending), comprised of §§153.1 - 153.5, 153.7 - 153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84 - 153.88 and 153.91 - 153.96.

Texas Constitution, Article XVI, §50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Pursuant to Section 50(u), as implemented by Texas Finance Code, §§11.308 and 15.413, the power to interpret Section 50(a)(5) - (7), (e) - (p), and (t) of the Texas Constitution has been separately and independently delegated to the commissions, subject to the statutory admonition that the commissions strive for consistency in the exercise of this independent authority. The commissions have jointly adopted the rules in 7 TAC Chapters 151 and 153.

The commissions believe that the reasons for adopting the rules contained in these chapters continue to exist. The commissions will accept written comments regarding the review of Chapters 151 and 153 for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or to Stacey McLarty, Assistant Commissioner and General Counsel, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to sealy.hutchings@occc.state.tx.us or to stacey.mclarty@tud.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001. Proposed amendments and interpretations are subject to public comment for a reasonable period of at least 30 days prior to final adoption or repeal by the commissions.

TRD-201301840

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

Leslie L. Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Filed: May 8, 2013

Adopted Rule Reviews

Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 11, relating to the Administrative Department. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 11 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 11 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 11, the commission finds the reasons for adopting Chapter 11 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 11. At a later date, the commission plans to propose revisions to clarify language in Chapter 11.

This concludes the review of 13 TAC Chapter 11.

TRD-201301733
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: May 1, 2013

The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 12, relating to the Texas Historic Courthouse Preservation Program. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 12 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government

Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 12 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 12, the commission finds the reasons for adopting Chapter 12 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 12. At a later date, the commission plans to propose revisions to clarify language in the administration of the programs.

This concludes the review of 13 TAC Chapter 12.

TRD-201301797

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 6, 2013



The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 14, relating to the Texas Historical Artifacts Acquisition Program. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 14 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 14 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 14, the commission finds the reasons for adopting Chapter 14 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 14. At a later date, the commission plans to propose revisions to clarify language in the administration of the program.

This concludes the review of 13 TAC Chapter 14.

TRD-201301734

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 1, 2013



The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 15, relating to the Administration of Federal Programs. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 15 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 15 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 15, the commission finds the reasons for adopting Chapter 15 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 15. At a later date, the commission plans to propose revisions to clarify language in the administration of the programs.

This concludes the review of 13 TAC Chapter 15.

TRD-201301798

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 6, 2013



The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 17, relating to the State Architectural Programs. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 17 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 17 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 17, the commission finds the reasons for adopting Chapter 17 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 17. At a later date, the commission plans to propose revisions to clarify language in the administration of the programs.

This concludes the review of 13 TAC Chapter 17.

TRD-201301799

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 6, 2013



The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 21, relating to History Programs. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 21 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 21 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 21, the commission finds the reasons for adopting Chapter 21 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 21. At a later date, the commission plans to propose revisions to clarify language in the administration of the programs.

This concludes the review of 13 TAC Chapter 21.

TRD-201301748

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 2, 2013



The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 22, relating to Cemeteries. This review was completed pursuant to Texas Gov-

ernment Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 22 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 22 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 22, the commission finds the reasons for adopting Chapter 22 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 22. At a later date, the commission plans to propose revisions to clarify language in the administration of the programs.

This concludes the review of 13 TAC Chapter 22.

TRD-201301749

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 2, 2013



The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 23, re-

lating to Publications. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 23 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 23 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 23, the commission finds the reasons for adopting Chapter 23 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapter 23. At a later date, the commission plans to propose revisions to clarify language related to publications.

This concludes the review of 13 TAC Chapter 23.

TRD-201301735

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: May 1, 2013



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §213.33(b)

Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33, published at 22 Tex. Admin. Code §213.33. The Matrix may list additional aggravating or mitigating factors which may be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301.

Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.

If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

The Board may assess administrative penalties as outlined in 22 Tex. Admin. Code §213.32.

Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.

Although not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code §213.29, §213.30, and §213.33.

This Matrix is also applicable to the determination of an individual's eligibility for licensure under the Occupations Code §301.257.

| §301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>First Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*. | Remedial Education, with or without a fine of \$250.00 or more for each additional violation. | Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, periodic board review; and/or a fine of \$500 or more for each additional violation. |
| Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms. | If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of \$250 or more for each additional violation. | |
| <u>Second Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years. | Requirement to complete conditions of original Board order and a fine of \$500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years). | Denial of Licensure, Suspension, Revocation, or Voluntary Surrender. |

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Third Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. | Revocation or Voluntary Surrender. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation. |
| Aggravating Circumstances for §301.452(b)(1): Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator. | | |
| Mitigating Circumstances for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period. | | |
| * Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action. | | |

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| §301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; | | |
| <u>First Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license. * | Remedial Education and/or a fine of \$250 or more for each additional violation. | Denial of Licensure or Revocation of nursing license. |

| <u>Second Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript. | Denial of Licensure or Revocation of nursing license. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation. |
| <i>Aggravating Circumstances for §301.452(b)(2):</i> Multiple offenses; the relevance or seriousness of the hidden information, whether the hidden information, if known, would have prevented licensure. | | |
| <i>Mitigating Circumstances for §301.452(b)(2):</i> Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel. | | |
| * Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action. | | |
| <p>§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;</p> <p>Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html [http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html]. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.</p> | | |

§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct published at <http://www.bon.texas.gov/disciplinaryaction/discp-guide.html> [<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>]. The Board will also utilize 22 Tex. Admin. Code §213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

Sanction:

Issuance of Cease and Desist Order with referral of all information to local law enforcement.

301.452(b)(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

Sanction:

Revocation of license for this offense.

| §301.452(b)(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>First Tier Offense:</u> | <u>Sanction Level I:</u> Remedial Education and/or a fine of \$250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities; periodic board review; and/or a fine of \$250 or more for each additional violation. | <u>Sanction Level II:</u> Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death. |
| <u>Second Tier Offense:</u> | <u>Sanction Level I:</u> Denial of Licensure, Revocation or Voluntary Surrender. | <u>Sanction Level II:</u> Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation. |
| Aggravating Circumstances of §301.452(b)(7): Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm. | | |
| Mitigating Circumstances of §301.452(b)(7): The existence of institutional policies that allow certain practices by unlicensed persons with certified competency. | | |
| * Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action. | | |

| §301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; | | |
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| <u>First Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond. | Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities; and/or periodic board review. | Revocation, Suspension, or Denial of Licensure when the individual doesn't respond or is not eligible for stipulated license. |
| Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board's rules and alcohol or substance misuse policy. http://www.bon.state.tx.us/disciplinaryaction/dsp.html . | Order to participate in Board approved peer assistance program. Action should be at least consistent with action from other jurisdiction. | Action should be at least consistent with action from other jurisdiction. |
| <u>Second Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas. | Revocation, denial of licensure, or voluntary surrender. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation. |
| <i>Aggravating Circumstances for §301.452(b)(8):</i> Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct. | | |

Mitigating Circumstances for §301.452(b)(8): Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.

§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;

First Tier Offense:

Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.

Sanction Level I:

Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse.

<http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

Sanction Level II:

For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.

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| <p><u>Second Tier Offense:</u></p> <p>Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.</p> | <p><u>Sanction Level I:</u></p> <p>Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. Includes individuals with non disciplinary history of peer assistance participation.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Reprimand with Stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p> | <p><u>Sanction Level II:</u></p> <p>Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p> |
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| <u>Third Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted. | <p>Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances.</p> <p>Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p> <p>Denial of Licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstinence from drugs/alcohol; and random drug testing through urinalysis.</p> | <p>Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities; and/or periodic board review.</p> <p>For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.</p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p> |

| <u>Fourth Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
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| Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death. | Denial of Licensure, Revocation or Voluntary Surrender. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.455 I, which may ultimately result in revocation. |
| <i>Aggravating Circumstances for §301.452(b)(9):</i> Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved; criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy. | | |
| <i>Mitigating Circumstances for §301.452(b)(9):</i> Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens. | | |

| §301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public; | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>First Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects. Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.* | Remedial Education and/or a fine of \$250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional. | Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities; and/or periodic Board review; and/or a fine of \$500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations. |

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| <p><u>Second Tier Offense:</u></p> <p>Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.</p> | <p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with Stipulations which may include remedial education, supervised practice, and/or perform public service. Fine of \$250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstinence from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities, and/or periodic Board review. Board will use its rules and disciplinary sanction policies related to drug or alcohol misuse in analyzing facts.</p> <p>http://www.bon.state.tx.us/disciplinaryaction/dsp.html.</p> | <p><u>Sanction Level II:</u></p> <p>Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstinence from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review.</p> <p>Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.</p> |
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| <u>Third Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
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| Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99. | Denial of licensure or revocation of nursing license. Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.455I, which may ultimately result in revocation. |
| <i>Aggravating Circumstances</i> for §301.452(b)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct. | | |
| <i>Mitigating Circumstances</i> for §301.452(b)(10): Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid. | | |
| * Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action. | | |

| §301.452(b)(11) adjudication of mental incompetency; | | |
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| <u>Sanction Level I:</u> | <u>Sanction Level II:</u> | <u>Sanction Level II:</u> |
| Denial of licensure or revocation of nursing license. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation. | |

| §301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or | | |
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| <u>First Tier Violation:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| A physical condition or diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning. | Referral to the Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review. | Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review. |
| <u>Second Tier Violation:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. "Lack of fitness" includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately. | With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review. | With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9). Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review. |

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| <u>Third Tier Violation:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations. | Denial of licensure or revocation of nursing license. | Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation. |
| <i>Aggravating Circumstances of §301.452(b)(12):</i> Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct. | | |
| <i>Mitigating Circumstances of §301.452(b)(12):</i> Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependency evaluation from a board approved evaluator who has opportunity to review the Board's file. | | |

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| §301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm. | | |
| <u>First Tier Offense:</u> | <u>Sanction Level I:</u> | <u>Sanction Level II:</u> |
| Practice below standard with a low risk of patient harm. | Remedial Education and/or fine of \$250 when there is isolated incident or a fine of more than \$250 for each additional violation. | Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic board review and/or fine of \$500 or more for each additional violation. |

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| <p><u>Second Tier Offense:</u></p> <p>Practice below standard with patient harm or risk of patient harm.</p> | <p><u>Sanction Level I:</u></p> <p>Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review and/or a fine of \$500 or more for each additional violation.</p> | <p><u>Sanction Level II:</u></p> <p>Denial, suspension of license, revocation of license, or request for voluntary surrender.</p> |
| <p><u>Third Tier Offense:</u></p> <p>Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.</p> <p>In addition, any intentional act or omission that risks or results in serious harm.</p> | <p><u>Sanction Level I:</u></p> <p>Denial, suspension of license; revocation of license or request for voluntary surrender.</p> | <p><u>Sanction Level II:</u></p> <p>Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.</p> |
| <p><i>Aggravating Circumstances for §301.452(b)(13):</i> Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.</p> | | |
| <p><i>Mitigating Circumstances for §301.452(b)(13):</i> Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.</p> | | |

Figure: 22 TAC §329.2(b)(2)(C)

**ADDITIONAL EDUCATION REQUIREMENTS FOR LICENSURE
APPLICANTS WHO FAIL THE NATIONAL EXAMINATION**

| Requirements based on: 1) number of failures AND 2) exam score (passing = 600) | | Tutorial Hour Requirements | CCU Requirements |
|----------------------------------------------------------------------------------------------|---------------------|----------------------------|------------------|
| A. Applicants who fail the exam 2 or 3 times | | | |
| PT.....599 - 586 | PTA.....599 - 584 | 25 hours tutorial | 15 CCUs |
| PT.....585 - 566 | PTA.....583 - 560 | 40 hours tutorial | 20 CCUs |
| PT.....565 & below | PTA.....560 & below | 80 hours tutorial | 40 CCUs |
| B. Applicants who fail the exam 4 times | | | |
| PT.....599 - 586 | PTA.....599 - 584 | 50 hours tutorial | 30 CCUs |
| PT.....585 - 566 | PTA.....583 - 560 | 80 hours tutorial | 40 CCUs |
| PT.....565 & below | PTA.....560 & below | 160 hours tutorial | 80 CCUs |
| C. Applicants who fail the exam 5, 6, or 7 times | | | |
| PT.....599 - 586 | PTA.....599 - 584 | | 60 CCUs |
| PT.....585 - 566 | PTA.....583 - 560 | | 90 CCUs |
| PT.....565 & below | PTA.....560 & below | | 150 CCUs |
| D. Applicants who fail the exam 8 or more times must repeat an accredited PT or PTA program. | | | |

Figure: 28 TAC §7.209(a)

_____ by _____
Name of Domestic Insurer Name of Acquiring Person (Applicant).

Filed with the Texas Department of Insurance, date: _____, 20__.

Name, title, address, email, and telephone number of individual to whom notices and
correspondence concerning this statement should be addressed:

Figure: 28 TAC §7.209(o)

_____ by _____
Name of Domestic Insurer Name of Divesting Person (Applicant).

Filed with the Texas Department of Insurance, date: _____, 20__.

Name, title, address, email, and telephone number of individual to whom notices and
correspondence concerning this statement should be addressed:

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823,

_____ has caused this application to

Name of Applicant

be signed on its behalf in the City of _____ and State of _____,

on _____, 20__.

(Name of Applicant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____ of _____,
(Title) (Name of Applicant)

who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify
which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____, County, _____

Figure: 28 TAC §7.210(a)

Filed with the Texas Department of Insurance by (name of registrant) on behalf of the following insurance companies:

Name

Address

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

date: _____, 20__ . Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

| |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |

Figure: 28 TAC §7.210(k)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823, the Registrant has caused this Registration Statement to be signed on its behalf in the City of

_____ and State of _____ on _____, 20____.

(Name of Registrant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that

he or she has read the preceding application and that the answers, exhibits and

attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify
which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____, County, _____

Figure: 28 TAC §7.211(a)

Filed with the Texas Department of Insurance

by

Name of Registrant

On behalf of the following Insurance Companies:

| Name | Address |
|------|---------|
|------|---------|

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Date: _____, 20____.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

| |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |

Figure: 28 TAC §7.211(g)

SIGNATURE AND CERTIFICATION

Pursuant to the requirements of Insurance Code Chapter 823, the Registrant has caused this Registration Statement to be signed on its behalf in the City of

_____ and State of _____ on _____, 20____.

(Name of Registrant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that

he or she has read the preceding application and that the answers, exhibits and

attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify
which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____ County, _____

Figure: 28 TAC §7.212(a)

Filed with the Texas Department of Insurance

by

Name of Applicant

On behalf of the following Insurance Companies:

Name

Address

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Date: _____, 20____.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

| |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |

Figure: 28 TAC §7.212(h)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823, the Applicant has caused this Prior Notice of a Transaction Statement to be signed on its behalf in the City of

_____ and State of _____ on _____,

20____.

(Name of Applicant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated that

he or she has read the preceding application and that the answers, exhibits and

attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify
which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____ County, _____

Figure: 28 TAC §7.213(a)

Date: _____, 20____.

Name, title, address, email, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

Figure: 28 TAC §7.213(b)(10)

SIGNATURE

Date: _____

(Name of Insurer)

By: _____

(Printed Name)

(Title)

Figure: 28 TAC §7.213(c)(10)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823, the Insurer has caused this notice to be signed on its behalf in the City of _____ and the State of _____ on _____, 20 ____.

(Name of Insurer)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____, who, after being placed on his or her oath, stated

that he or she has read the preceding application and that the answers, exhibits, and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20 _____,

to certify which witness my hand and seal of office.

(Signature)

Notary Public in and for

(Seal)

_____ County, _____

Figure: 28 TAC §7.214(a)

Filed with the Texas Department of Insurance

by

Name of Registrant/Applicant

On behalf of/related to the following Insurance Companies:

Name Address

Date _____, 20__.

Name, title, address, email, and telephone number of individual to whom notices and
correspondence concerning this statement should be addressed:

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: Specialty Crop Industry Retail Promotion Reimbursement Grant

Introduction. The Texas Department of Agriculture (TDA) announces the availability of funds from the United States Department of Agriculture (USDA) Specialty Crop Block Grant Program (SCBGP) to support the industry promotion initiative developed by TDA. This document contains grant guidance and the application. The SCBGP is authorized by the Food, Conservation, and Energy Act of 2008 (Farm Bill), which amended the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and authorized the USDA to provide grants to States for each of the fiscal years 2008 through 2012 to enhance the competitiveness of specialty crops.

Program Goal. The Specialty Crop Industry Retail Promotion Reimbursement Grant is designed to create a concentrated and coordinated effort between industry and retailers across the state to promote Texas produce.

Eligibility. Texas producers and producer associations (Applicants) that grow Texas produce or tree nuts or represent producers that sell Texas produce or tree nuts directly to retailers may apply for funds to enhance their promotional activities of these Texas specialty crops. Applicants must be current GO TEXAN members. To apply for GO TEXAN membership, please visit: www.GoTexan.org.

Submission. Applications and instructions may be downloaded on TDA's GO TEXAN website, www.GoTexan.org. Eligible applicants will be considered for funding contingent upon the availability of funds. Completed applications will be reviewed on a first-come, first-served basis, based on the eligibility of the applicant. Applicants are encouraged to submit applications as soon as possible. Applications will be accepted by the Texas Department of Agriculture until the close of business (5:00 p.m. CST) on July 31, 2013, or until all funds are awarded, whichever is first.

Submit one application and all attachments to:

Mailing Address: Texas Department of Agriculture, Marketing and International Trade Division, Attn: Specialty Crop Program, P.O. Box 12847, Austin, Texas 78711.

Or (for overnight delivery):

Street Address: Texas Department of Agriculture, Marketing and International Trade Division, Attn: Specialty Crop Program, 1700 N. Congress Ave., 11th Floor, Austin, Texas 78701.

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Richard De Los Santos, marketing coordinator, at (512) 463-7472 or by email at grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201301732

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 1, 2013

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *Young Chevrolet, Inc., et al. v. Texas Commission on Environmental Quality, et al.*; Cause No. D-1-GN-10-000772; in the 345th District Court, Travis County, Texas.

Background: This case involves the remediation of the Voda Petroleum, Inc., State Superfund Site, in Gregg County, Texas. The Texas Commission on Environmental Quality ("TCEQ") has expended more than \$2.2 million in cleaning up contamination at the site. Total response costs are expected to exceed \$2.5 million. On February 12, 2010, the TCEQ issued an administrative order styled "In the Matter of the Site Known as Voda Petroleum, Inc., State Superfund Site, Docket No. 2009-1706-SPF" ("the Order"), finding that certain parties were responsible for solid waste and hazardous substances at the Site, providing for a cleanup, and other matters. Various parties appealed the Order; those appeals were consolidated into the above-referenced lawsuit. In a previous severed judgment, the TCEQ settled with 154 private parties and seven federal agencies.

Nature of the Settlement: The lawsuit will be settled, as to Ark-La-Tex Waste Oil Co., Inc., by an agreed final judgment in the district court.

Proposed Settlement: The proposed judgment provides for the recovery of response costs and attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas, and copies may be obtained in person or by mail for the cost of copying. Requests for copies of the judgment and settlement, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (MC-066), P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

TRD-201301804

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/06/13 - 05/12/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/06/13 - 05/12/13 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201301805
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 7, 2013

◆ ◆ ◆
Texas Education Agency

Correction of Error

The Texas Education Agency (TEA) adopted amendments to 19 TAC §§101.1, 101.5, 101.25, 101.27, 101.33, and 101.101 and the repeal of 19 TAC §§101.7, 101.9, 101.11, 101.13, 101.21, 101.29, 101.61, 101.63, 101.65, 101.81, and 101.83, concerning student assessment, in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1676).

On page 1678, first column, the title of Chapter 101, Subchapter B appears as "Development and Administration of Tests," which is not the correct name of the subchapter. The correct name of Subchapter B is "Implementation of Assessments."

TRD-201301830

◆ ◆ ◆
Public Notice Announcing Application for Waiver to Title I, Part A, Carryover Limitation, under the Elementary and Secondary Education Act of 1965, Section 1127(a)

Purpose and Scope of the Waiver Request. The Elementary and Secondary Education Act of 1965 (ESEA), Section 1127(a), prohibits local educational agencies (LEAs) from carrying over more than 15% of their Title I, Part A, allocations into the next fiscal year. Section 1127(b) permits the state educational agency to waive the 15% carryover limitation once every three years if the agency determines that the LEA's request is reasonable and necessary.

The implementation of the federal budget sequester has resulted in additional uncertainty about the amount of federal fiscal year 2013 funds that will be available for use by LEAs primarily in the 2013-2014 school year (SY). In response to this uncertainty, the U.S. Department of Education (USDE) has offered states the opportunity to request a waiver to the carryover limitation in the ESEA, Section 1127(a) and (b). The Texas Education Agency (TEA) is requesting this waiver to permit an LEA to carry over SY 2012-2013 Title I, Part A, funds in

excess of the statutory 15% carryover limitation, even if the LEA has been granted permission to exceed the carryover limitation in either of the prior two school years.

TEA believes that the waiver will provide the ability to grant an LEA the flexibility it needs to spend its SY 2012-2013 Title I, Part A, funds more thoughtfully over the remainder of SY 2012-2013 and in SY 2013-2014. The waiver will allow LEAs to plan for activities that are most likely to increase the quality of instruction and improve the academic achievement of students while facing a likely reduction in their SY 2013-2014 Title I, Part A, allocations. Accordingly, TEA believes the waiver may help more Texas schools and LEAs meet Adequate Yearly Progress (AYP) objectives by enabling them to direct their funds thoughtfully to activities that will help in this regard.

TEA has notified LEAs that might be affected by such a waiver request to solicit comment from the LEAs. TEA will review and consider any comments received in determining whether to apply for the waiver, and if so, for which allowable program areas to implement the waiver request.

In accordance with USDE requirements, TEA will use AYP or its approved waiver request, as appropriate, to evaluate LEAs' progress in increasing the quality of instruction and improving academic achievement.

Further Information. For further information regarding the statutory limitation on Title I, Part A, carryover amounts, contact the Division of Grants Administration at (512) 463-8525 or grants@tea.state.tx.us.

TRD-201301839
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 8, 2013

◆ ◆ ◆
Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is June 17, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 17, 2013. Writ-

ten comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 838 Bandera Road Management LLC dba Phillips Bandera; DOCKET NUMBER: 2012-2713-PST-E; IDENTIFIER: RN100695980; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: ABDUN, INCORPORATED dba Texaco Food Mart; DOCKET NUMBER: 2012-2371-PST-E; IDENTIFIER: RN106037674; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Alan Matysiak dba Long Point Corner Store; DOCKET NUMBER: 2012-2432-PST-E; IDENTIFIER: RN102273646; LOCATION: Karnack, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,881; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: AWAIS & HADI LLC dba Hanna Mart 2; DOCKET NUMBER: 2012-2733-PST-E; IDENTIFIER: RN102372810; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,687; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Chemical Lime, Ltd.; DOCKET NUMBER: 2011-0274-AIR-E; IDENTIFIER: RN100552454; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: lime manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 7808 and PSD-TX-256-M3, Special Conditions Numbers 1 and 3, Federal Operating Permit Number O-01122, Special Terms and Conditions Number 8, and Texas Health and Safety Code §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$7,400;

ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Houston; DOCKET NUMBER: 2013-0056-MWD-E; IDENTIFIER: RN101608685; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010495100, Effluent Limitations and Monitoring Requirements Number 5, and 30 TAC §319.5(a), by failing to collect effluent samples at the required location; TWC, §26.121(a) and TPDES Permit Number WQ0010495100, Permit Conditions Number 2.d., by failing to prevent the discharge of a hazardous substance from the facility into or adjacent to water in the state; TPDES Permit Number WQ0010495100, Operational Requirements Number 1 and 30 TAC §305.125(1) and (5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §327.3(a) and (b), by failing to notify the TCEQ within 24 hours of becoming aware of a reportable discharge or spill of a hazardous substance into the environment in a quantity equal to or greater than the reportable quantity in any 24-hour period; PENALTY: \$27,189; Supplemental Environmental Project offset amount of \$27,189 applied to Bayou Land Conservancy fka Legacy Land Trust - Spring Creek Greenway Project; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: DIVERSIFIED PLASTERING, INCORPORATED dba Diversified Drywall; DOCKET NUMBER: 2013-0117-PST-E; IDENTIFIER: RN101771236; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank (UST) system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,067; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: FUELCON MANAGEMENT LLC dba Horizon; DOCKET NUMBER: 2013-0016-PST-E; IDENTIFIER: RN102726718; LOCATION: Sanger, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Hamshire-Fannett Independent School District; DOCKET NUMBER: 2012-2204-MWD-E; IDENTIFIER: RN102334877; LOCATION: Hamshire, Jefferson County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: TWC, §26.121, 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012098001, Permit Conditions Number 2.d., by failing to prevent the discharge of wastewater into or adjacent to water in the state; PENALTY: \$4,300; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Huntington Independent School District; DOCKET NUMBER: 2013-0033-PST-E; IDENTIFIER: RN102031275; LOCATION: Huntington, Angelina County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and

TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the UST; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Magellan Terminals Holdings, L.P.; DOCKET NUMBER: 2013-0305-AIR-E; IDENTIFIER: RN102180486; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: bulk storage terminal; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1128, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days of the end of the certification period; PENALTY: \$3,900; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Minesh Patel dba Time Saver Grocery; DOCKET NUMBER: 2012-2631-PST-E; IDENTIFIER: RN102228640; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: NATIONAL ELECTRIC COIL COMPANY, L.P.; DOCKET NUMBER: 2012-1202-MLM-E; IDENTIFIER: RN100617448; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: engine and motor manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(2) and 40 Code of Federal Regulations (CFR) §262.34(a)(2), by failing to have a beginning accumulation date on each container storing hazardous waste; 30 TAC §335.112(a)(3) and §335.69(a)(4)(A) and 40 CFR §262.34(a)(4) and §265.52(d) - (f), by failing to maintain an adequate contingency plan; 30 TAC §335.112(a)(1) and §335.69(a)(4)(A) and 40 CFR §262.34(a)(4) and §265.16(c) and (d)(3), by failing to provide annual review training to the plant personnel in the handling of hazardous waste materials; 30 TAC §335.6(c), by failing to update the plant's Notice of Registration; 30 TAC §335.13(k) and 40 CFR §262.42(a)(2), by failing to submit an exception report for not receiving a copy of a manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter; 30 TAC §116.115(b)(2)(E)(i) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a copy of the permit at the plant; 30 TAC §116.115(c) and New Source Review (NSR) Permit Number 20956, Special Conditions (SC) Number 2, and THSC, §382.085(b), by failing to mark the location of all permitted sources in a conspicuous location to correspond with identification on the plot plan and maximum allowable emission rate tables; and 30 TAC §116.115(c), NSR Permit Number 20956, SC Numbers 11.B. and 11.C., and THSC, §382.085(b), by failing to maintain information and data to demonstrate continuous compliance with the restricted hours of operation; PENALTY: \$20,164; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: NISU, Incorporated dba Eastland Food Mart 2; DOCKET NUMBER: 2013-0072-PST-E; IDENTIFIER: RN102016987; LOCATION: Eastland, Eastland County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Pavan Sut, Incorporated dba Dalton's Corner; DOCKET NUMBER: 2013-0026-PST-E; IDENTIFIER: RN103156097; LOCATION: Lone Star, Upshur County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Robert Bryer dba Bentwood Estates Mobile Home Park; DOCKET NUMBER: 2012-2047-PWS-E; IDENTIFIER: RN102682192; LOCATION: Huffman, Harris County; TYPE OF FACILITY: mobile home park with a public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the months of August and September 2012; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$939; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Styrolution America LLC; DOCKET NUMBER: 2012-1839-AIR-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) Number O1625, Special Terms and Conditions (STC) Number 15, Air Permit Number 5252, Special Conditions (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the allowable hourly emissions rate; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Air Permit Number 5252, SC Number 1, and FOP Number O1625, STC Number 15, by failing to comply with the allowable annual nitrogen oxides and carbon monoxide emissions rates for the flare, Emissions Point Number FL; PENALTY: \$47,100; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: TEXAS NEW HORIZON, INCORPORATED dba Country Store; DOCKET NUMBER: 2012-1765-PST-E; IDENTIFIER: RN102364387; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to

provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,464; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Thomson Enterprises, Incorporated dba Bender Texaco; DOCKET NUMBER: 2012-2528-PST-E; IDENTIFIER: RN101259067; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$5,063; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Travis Morehead dba Little Boots Grocery; DOCKET NUMBER: 2013-0477-PST-E; IDENTIFIER: RN102382496; LOCATION: Huntington, Angelina County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Trinity Industries, Incorporated; DOCKET NUMBER: 2012-1916-AIR-E; IDENTIFIER: RN102418563; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: railcar fabrication and repair plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review Permit Number 7318A, Special Conditions Number 13C, by failing to produce and maintain a monthly particulate matter emissions report for the abrasive blasting operations; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a Federal Operating Permit; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: WILDCAT GROCERY, Incorporated; DOCKET NUMBER: 2012-2189-PST-E; IDENTIFIER: RN101931335; LOCATION: Harleton, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201301809

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 7, 2013



Enforcement Orders

An agreed order was entered regarding Food Fast Corporation dba FAST FOOD 100, Docket No. 2011-1410-PST-E on April 16, 2013 assessing \$4,348 in administrative penalties with \$869 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WORTHAM OAKS HOME-OWNERS ASSOCIATION, INC., Docket No. 2011-1824-MLM-E on April 16, 2013 assessing \$2,750 in administrative penalties with \$550 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KC CORPORATION dba Alma One Stop, Docket No. 2011-2331-PST-E on April 16, 2013 assessing \$2,629 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAKE LIVINGSTON WATER SUPPLY & SEWER SERVICE CORPORATION, Docket No. 2012-0125-PWS-E on April 16, 2013 assessing \$817 in administrative penalties with \$163 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AAA & Family, L.L.C. dba Tommy's Drive In, Docket No. 2012-0178-PST-E on April 16, 2013 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding T.N.A. GROUP, INC. dba Storm Convenience Store, Docket No. 2012-0908-PST-E on April 16, 2013 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Williamson County, Docket No. 2012-1045-EAQ-E on April 16, 2013 assessing \$938 in administrative penalties with \$187 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alto, Docket No. 2012-1109-MWD-E on April 16, 2013 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ghene's, Inc. dba Rite Track, Docket No. 2012-1114-PST-E on April 16, 2013 assessing \$2,943 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLOMOT WATER SUPPLY CORPORATION, Docket No. 2012-1534-PWS-E on April 16, 2013 assessing \$1,090 in administrative penalties with \$217 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carlton Anderson, Docket No. 2012-1588-WOC-E on April 16, 2013 assessing \$761 in administrative penalties with \$152 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIPLE R BANDERA ENTERPRISES, LTD., Docket No. 2012-1748-EAQ-E on April 16, 2013 assessing \$7,275 in administrative penalties with \$1,455 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 2000 IIG INC. dba Diamond Super Mart 2, Docket No. 2012-1766-PST-E on April 16, 2013 assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAMIL ENTERPRISES INC. dba Mega Royal Mart, Docket No. 2012-1767-PST-E on April 16, 2013 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cryovac, Inc., Docket No. 2012-1800-AIR-E on April 16, 2013 assessing \$4,938 in administrative penalties with \$988 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I F Y ENTERPRISES INC dba Super Track, Docket No. 2012-1858-PST-E on April 16, 2013 assessing \$3,510 in administrative penalties with \$702 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GF GROUP, INC. dba Hill Country RV Resort and Event Center, Docket No. 2012-1864-PWS-E on April 16, 2013 assessing \$715 in administrative penalties with \$143 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carlos Fernandez, Docket No. 2012-1870-IWD-E on April 16, 2013 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manasiya Properties, Inc. dba The Express 2, Docket No. 2012-1906-PST-E on April 16, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rick Eager dba Town and Country Airport, Docket No. 2012-1942-PST-E on April 16, 2013 assessing \$4,068 in administrative penalties with \$813 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DOUBLEKEY CROWN CORPORATION dba Felders Texaco, Docket No. 2012-1957-PST-E on April 16, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kim Ivey, Docket No. 2012-1960-OSS-E on April 16, 2013 assessing \$688 in administrative penalties with \$138 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Syeda Farhana Zarrin dba Corner Market, Docket No. 2012-1978-PST-E on April 16, 2013 assessing \$2,943 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stephenville, Docket No. 2012-2050-PST-E on April 16, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Z.K.L. ENTERPRISE, INC. dba Step N Go, Docket No. 2012-2053-PST-E on April 16, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GAMS INC. dba Kingsville Food Mart, Docket No. 2012-2075-PST-E on April 16, 2013 assessing \$3,885 in administrative penalties with \$777 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUCKY ENTERPRISES, INC. dba Lucky Mini Mart, Docket No. 2012-2094-PST-E on April 16, 2013 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Louie Reagan dba Bald Prairie Store, Docket No. 2012-2095-PST-E on April 16, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Balraj Singh dba Angel Stop, Docket No. 2012-2102-PST-E on April 16, 2013 assessing \$3,638 in administrative penalties with \$727 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Upham Oil & Gas Company, L.P. dba Upham Hanger, Docket No. 2012-2114-PST-E on April 16, 2013 assessing \$2,580 in administrative penalties with \$516 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Amherst, Docket No. 2012-2134-MWD-E on April 16, 2013 assessing \$1,876 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASMR FAMILY, L.L.C. dba Sun Mart, Docket No. 2012-2148-PST-E on April 16, 2013 assessing \$6,694 in administrative penalties with \$1,338 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIRZIANS, INC. dba M & R Food Mart, Docket No. 2012-2152-PST-E on April 16, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MABIS, INC. dba Fulton Food & Gas, Docket No. 2012-2177-PST-E on April 16, 2013 assessing \$3,543 in administrative penalties with \$708 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E - Z INTERNATIONAL INC. dba E -Z Mart #9, Docket No. 2012-2206-PST-E on April 16, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Soon I. Chin dba Stan C Store, Docket No. 2012-2221-PST-E on April 16, 2013 assessing \$3,505 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Splendor, Docket No. 2012-2224-PWS-E on April 16, 2013 assessing \$1,485 in administrative penalties with \$297 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADAMS FOOD MART INC dba D S Texaco, Docket No. 2012-2244-PST-E on April 16, 2013 assessing \$3,380 in administrative penalties with \$676 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Familia Retail Inc dba Quick N Easy Beverage Barn, Docket No. 2012-2256-PST-E on April 16, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAU ENTERPRISES LLP dba In & Out Food Mart, Docket No. 2012-2259-PST-E on April 16, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512)

239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JML Enterprises, Inc. dba Pic-N-Pay Grocery, Docket No. 2012-2299-PST-E on April 16, 2013 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAREE G.A., INC. dba Day & Nite Foods, Docket No. 2012-2310-PST-E on April 16, 2013 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Myeong Jeong dba C & S Store, Docket No. 2012-2313-PST-E on April 16, 2013 assessing \$5,004 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Ward, Docket No. 2012-2318-PWS-E on April 16, 2013 assessing \$168 in administrative penalties with \$33 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mo's Exxon Inc., Docket No. 2012-2323-PST-E on April 16, 2013 assessing \$2,567 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hugh L. Baker and Danny Talbot dba Dannys Phillips 66, Docket No. 2012-2350-PST-E on April 16, 2013 assessing \$3,883 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALAMO CONCRETE PRODUCTS COMPANY, Docket No. 2012-2356-AIR-E on April 16, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lubbock Reese Redevelopment Authority Corporation, Docket No. 2012-2369-PWS-E on April 16, 2013 assessing \$100 in administrative penalties with \$20 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-

2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hatem Alramahi dba Eagle Stop Convenience Store, Docket No. 2012-2433-PST-E on April 16, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sammy J. Young and Michael C. Young dba Chevron Food Mart 2, Docket No. 2012-2442-PST-E on April 16, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bridgestone Retail Operations, LLC, Docket No. 2012-2452-EAQ-E on April 16, 2013 assessing \$1,564 in administrative penalties with \$312 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phero & Anna, Inc. dba Lone Star Market 2, Docket No. 2012-2465-PST-E on April 16, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPARKY FUELS, INC. dba Super Sak 2, Docket No. 2012-2501-PST-E on April 16, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Heimco, Inc. dba Fishermans One Stop, Docket No. 2012-2511-PST-E on April 16, 2013 assessing \$3,508 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ringo Drilling I, LP, Docket No. 2013-0176-WR-E on April 16, 2013 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Atkinson Candy Company, Docket No. 2013-0177-WQ-E on April 16, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sammie L. Bell, Docket No. 2013-0180-WOC-E on April 16, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Valley Boring Service LLC, Docket No. 2013-0227-WR-E on April 16, 2013 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding COLLINS WISE OIL COMPANY, L.L.C., Docket No. 2013-0237-PST-E on April 16, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding SIRPUNCH, INC. dba Quick Corner Store, Docket No. 2013-0238-PST-E on April 16, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding HOODBRO ENTERPRISES, INC. dba Marsh Lane Texaco, Docket No. 2013-0239-PST-E on April 16, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301828

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2013



Notice of Correction to Agreed Order Number 4

In the April 26, 2013, issue of the *Texas Register* (38 TexReg 2664), the Texas Commission on Environmental Quality published a notice of Agreed Orders. Agreed Order Number 4, concerning HRS Site Control, LLC, which appeared on page 2665, has been revised. The reference to the Company Name should be "HSR Site Control, LLC."

For questions concerning this error, please contact Lena Roberts at (512) 239-0019.

TRD-201301810

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 7, 2013



Notice of District Petition

Notice issued April 30, 2013.

TCEQ Internal Control No. D-01312013-023; Cimarron Hills Development, L.L.C. and Stanley M. Jensen and Carol R. Jensen Family Trust ("Petitioners") filed a petition for creation of Williamson County Municipal Utility District No. 26 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Lightning Ranch Holding Company, L.L.C., on the land to be included in the proposed District and Lightning Ranch Holding Company, L.L.C. has consented to the petition; (3) the proposed District will contain approximately 376.12 acres located in Williamson County, Texas; and (4) the proposed District is wholly within the corporate boundaries of the City of Georgetown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 111312-6, effective November 13, 2012, the City of Georgetown, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate such facilities and services for residential and related development for the purposes of providing water, wastewater, and drainage facilities and services; park and recreation facilities and services; and road improvement, for the land within the boundaries of the proposed District. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately \$30,610,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after

the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087.

For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201301826

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2013



**Notice of Meeting on June 20, 2013, in San Angelo, Texas,
Concerning the San Angelo Electric Service Company
Proposed State Superfund Site**

The purpose of the meeting is to obtain public input and information concerning the proposed remedy for the San Angelo Electric Service Company (SESCO) Proposed State Superfund Site (the site).

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a proposed selection of remedy for the site. In accordance with 30 Texas Administrative Code (TAC) §335.349(a), concerning requirements for the remedial action, and Texas Health and Safety Code (THSC), §361.187, concerning the proposed remedial action, a public meeting regarding the commission's selection of a proposed remedy for the site shall be held. In accordance with the THSC, the commission is publishing notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *San Angelo Standard Times* on May 17, 2013.

The public meeting is scheduled June 20, 2013, at 7:00 p.m., Central High School cafeteria, 655 Caddo, San Angelo, Texas 76901. The public meeting is not a contested case hearing under the Texas Government Code Chapter 2001.

The site was proposed for listing on the Texas Superfund Registry in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8209). The site is located on six acres in a mixed residential and commercial/industrial area of northeastern San Angelo, Tom Green County, at 926 Pulliam Street. SESCO was founded in 1932 as a motor magneto and starter repair company. Around 1946, the company transitioned its operations to building, repairing, and servicing electrical transformers. During its operations, polychlorinated biphenyls (PCBs), a component of certain transformer oils, were discovered in the soil and groundwater both on and off the SESCO property.

SESCO conducted limited soil and groundwater investigation and remediation activities between 1994 and 2002. SESCO ceased operations in 2003. In late 2004, the SESCO Site Working Group entered into an agreement with the TCEQ and the Texas Attorney General's Office to take over interim management of the site. An Agreed Administrative Order governing the conduct of a Remedial Investigation and

Feasibility Study, removal actions, and operations and maintenance activities at the site became effective October 2, 2006. The Remedial Investigation (RI) activities included the collection of soil and groundwater samples to determine the horizontal and vertical extent of contamination exceeding the Texas Risk Reduction Program protective concentration levels (PCLs). The primary chemicals of concern (COCs) at the site are PCBs associated with petroleum hydrocarbons occurring in both soil and groundwater. Additional COCs include volatile organic compounds, semi-volatile organic compounds, and metals. The RI also found several buildings contaminated with PCBs. During the time the RI was in the progress, several off-site and on-site removal actions were completed. The off-site removal actions were conducted to protect human health and the environment, and the on-site removal action was conducted to facilitate the RI.

Following the completion and approval of the RI, a Feasibility Study (FS) was conducted for the site. The FS Document presented an evaluation of potential remedial alternatives to address the COCs in the site's soil, groundwater, and buildings found to exceed the applicable PCLs. The proposed remedial action includes: 1) excavation and off-site disposal of contaminated soils that exceed critical PCLs; 2) control and attenuation of contaminated groundwater within a plume management zone; 3) non-aqueous phase liquid extraction to the extent practicable; and 4) demolition and off-site disposal of site buildings in which PCB levels exceed critical PCLs. Once the contaminated soils have been removed, groundwater management will continue until all COCs are below their respective PCLs. The proposed remedial action is the most cost effective, reasonable, and appropriate remedy to address the contamination at the site.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on June 19, 2013, and should be sent in writing to Phillip Winsor, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on June 20, 2013.

A portion of the record for the site, including the Proposed Remedial Action Document and other documents pertinent to the proposed remedy, are available for review during regular business hours at the Stephens Central Library, 33 West Beauregard, San Angelo, Texas 76903. The telephone number for the library is (325) 655-7321. Copies of the public record file may be reviewed during business hours at the commission's Central File Room on the first floor of Building E at 12100 Park 35 Circle, Austin, Texas 78753. Additional files can be obtained from Phillip Winsor, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087, phone number (512) 239-1054. The telephone number for the Central File Room is (512) 239-2900. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at <http://www.tceq.texas.gov/remediation/superfund/state/sesco.html>.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at telephone number (800) 633-9363 or (512) 239-5906. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Crystal Taylor, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-201301806



**Notice of Receipt of Application and Intent to Obtain
Municipal Solid Waste Limited Scope Permit Major
Amendment Proposed Permit No. 1749B**

APPLICATION. Lewisville Landfill TX, LP, 801 E. College Street, Lewisville, Denton County, Texas 75057, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type IV Municipal Solid Waste Limited Scope Permit Major Amendment to obtain authorization to permit two additional alternative liner systems for Sectors 2B, 3, 4, and 5 at the landfill. The facility is located at the address listed above. The TCEQ received the application on April 1, 2013. The permit application is available for viewing and copying at the Lewisville Public Library, 1197 West Main Street, Lewisville, Denton County, Texas 75067 and may be viewed online at <http://www.ftwweaverboos.com>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.051666&lng=-96.976666&zoom=13&type=r> For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court. TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If

the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Lewisville Landfill TX, LP at the address stated above or by calling Mr. Robert C. Cox, General Manager, at (972) 434-3685.

TRD-201301827
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 8, 2013



Notice of Water Quality Applications

The following notices were issued on April 26, 2013 through May 3, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

PASADENA REFINING SYSTEM INC 111 Red Bluff Road, Pasadena, Texas 77506, which operates Pasadena Refining System WWTP, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000574000, which

authorizes the discharge of stormwater via Outfall 001; stormwater and hydrostatic test water via Outfall 002; and stormwater and hydrostatic test water via Outfall 003. The facility is located at 111 Red Bluff Road, immediately northeast of the intersection of Red Bluff Road and South Shaver Street, and immediately southeast of the intersection of Red Bluff Road and State Highway 225 in the City of Pasadena, Harris County, Texas 77506.

REICHHOLD INC which operates an organic chemicals manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0000662000, which authorizes the discharge of process wastewater, utility wastewater, wash water, and stormwater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 1503 Haden Road, approximately 0.33 mile south of the intersection of Interstate Highway 10 and Market Street in the City of Houston, Harris County, Texas 77015. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

GEORGIA GULF CHEMICALS AND VINYLs LLC which operates Georgia Gulf Chemicals & Vinyls, Pasadena WWTP, an organic chemical manufacturing plant that primarily produces cumene, phenol, and acetone, has applied for a renewal of TPDES Permit No. WQ0002067000, which authorizes the discharge of: cooling tower blowdown, boiler blowdown, steam system blowdown, and stormwater at a daily maximum dry weather flow rate not to exceed 320,000 gallons per day, via Outfall 001; stormwater from the dock area at an intermittent and flow-variable rate via Outfalls 002 and 003; treated process wastewater, utility waters, and treated domestic sewage at a daily average flow rate not to exceed 450,000 gallons per day via Outfall 004; and stormwater at an intermittent and flow-variable rate via Outfall 006. The facility is located at 3503 Pasadena Freeway, on the south bank of the Houston Ship Channel, approximately 7,500 feet north of State Highway 225, in the City of Pasadena, Harris County, Texas 77503. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office (GLO), and has determined that the action is consistent with the applicable CMP goals and policies.

SEQUA CORPORATION which operates Precoat Metals WWTP, a coil coating facility, has applied for a renewal of TPDES Permit No. WQ0002160000, which authorizes the discharge of previously monitored effluents from internal Outfalls 101 (treated process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 30,000 gallons per day) and 201 (treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day) at a daily average flow not to exceed 45,000 gallons per day via Outfall 001. The facility is located at 16402 Jacintoport Boulevard in the Jacintoport Industrial Park, in the City of Houston, Harris County, Texas 77015.

VEOLIA ES TECHNICAL SOLUTIONS LLC which operates Veolia Port Arthur Facility, a commercial storage treatment and disposal facility for industrial solid and hazardous wastes, has for a major amendment to TPDES Permit No. WQ0002417000 to authorize the discharge of steam condensate in addition to the currently authorized discharges of boiler blowdown, non-process area stormwater, and treated domestic wastewater (previously monitored via internal Outfall 101) via Outfall 001 on an intermittent and variable flow basis. The facility is located south of State Highway 73 and approximately 3.5 miles southwest of the location where State Highway 73 bridge crosses Taylor Bayou, Jefferson County, Texas 77640. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management

Program goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF LAMPASAS has applied for a renewal of TPDES Permit No. WQ0010205002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the south side of Sulphur Creek, at the east end of Creek Street, approximately 6,000 feet northeast of the intersection of U.S. Highway 183 and U.S. Highway 190 in the City of Lampasas in Lampasas County, Texas 76550.

CITY OF WILLIS has applied for a renewal of TPDES Permit No. WQ0010315001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 10725 Highway 75, Willis, 200 yards west of the U.S. Highway 75 crossing of the East Fork of Crystal Creek and approximately 2 miles south of the City of Willis in Montgomery County, Texas 77378.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495149, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 21951 Trail Tree Lane, Kingwood, approximately 1,100 feet north of Hamblen Road, approximately 2,750 feet east of the intersection of U.S. Highway 59 and State Highway 494, and 4,400 feet south of the Montgomery-Harris County Line in Harris County, Texas 77339.

SHELDON ROAD MUD has applied for a renewal of TPDES Permit No. WQ0010541002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located at 11143 Gardentree Drive, Houston, approximately 0.8 mile northwest of the intersection of Business Highway 90 (Beaumont Highway) and Sheldon Road in Harris County, Texas 77044.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 58 has applied for a renewal of TPDES Permit No. WQ0010668001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The facility is located at 20410 Buffalo Trail, approximately 4 miles south-southwest of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 2100 in Harris County, Texas 77532.

CITY OF KATY has applied for a renewal of TPDES Permit No. WQ0010706001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,075,000 gallons per day. The facility is located at 25839 Interstate Highway 10, approximately 1,000 feet south of Interstate Highway 10 in the City of Katy in Fort Bend County, Texas 77494.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0011701001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at 14102 Dartwood Drive, Houston, on Sulphur Gully, approximately one-half mile north of Wallisville Road and one mile east of C.E. King Parkway in Harris County, Texas 77049.

GULF COAST TRADES CENTER has applied for a renewal of TPDES Permit No. WQ0012159001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 143 Forest Service Road 233, New Waverly, approximately 3.8 miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 1375 and northeast of Lake Conroe in Walker County, Texas 77358. The treated effluent is discharged to Fivemile Branch; thence to Gum Branch;

thence to Lake Conroe in Segment No. 1012 of the San Jacinto River Basin.

BOLIVAR UTILITY SERVICES LLC has applied for a renewal of TPDES Permit No. 12936-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the north side of State Highway 87, approximately 3,000 feet west of the intersection of State Highway 87 and Monkhouse Road in the City of Crystal Beach in Galveston County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 112 has applied for a renewal of TPDES Permit No. WQ0013628001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 4050 U.S. Highway 90A, in Sugar Land, approximately 3,000 feet north of the Brazos River and 4,800 feet west of Sartartia Road (Farm-to-Market Road 1464 south of U.S. Highway 90A), and 8,000 feet south of U.S. Highway 90A in Fort Bend County, Texas 77479.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 112 has applied for a renewal of TPDES Permit No. WQ0014671001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 997 Jacobs Lake Boulevard, Conroe, 4,000 feet north of Farm-to-Market Road 1488 and 10,100 feet west of Interstate Highway 45 in Montgomery County, Texas 77384.

AQUA TEXAS INC has applied for a major amendment to TPDES Permit No. WQ0014973001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 200,000 gallons per day. The facility will be located at 29904 Farm-to-Market Road 2978, Magnolia, approximately 2,496 feet south of the intersection of Woodlands Parkway and Farm-to-Market Road 2978 in the City of Magnolia in Montgomery County, Texas 77354.

TRD-201301824

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2013



Notice of Water Rights Application

Notice issued May 3, 2013.

APPLICATION NO. 12635; SLF III - The Canyon in Oak Cliff, L.P., 5949 Sherry Lane, Suite 1750, Dallas, Texas 75225, Applicant, has applied for a Water Use Permit to construct and maintain five dams and reservoirs located on unnamed tributaries of the West Fork (Old Channel) Trinity River, Trinity River Basin, for recreation and agricultural purposes in Dallas County. Applicant also seeks a bed and banks authorization to convey groundwater for re-circulation and for agricultural purposes. The application and partial fees were received on October 4, 2010. Additional information and fees were received on January 18, April 25, June 24, and July 1, 2011. The application was declared administratively complete and accepted for filing on July 6, 2011. Additional technical information was received on December 15, 2011. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include time limitations and special conditions including, but not limited to, maintaining the reservoirs with an alternative source of water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief

Clerk, 12100 Park 35 Circle, Bldg. F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301825

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2013



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on May 7, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Shawna, Inc.; SOAH Docket No. 582-13-0645; TCEQ Docket No. 2011-2299-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Shawna, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin,

Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201301829

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2013

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: 30-Day Pre-Election Report due October 9, 2012, for Committees

James Frinzi, Goodman Networks, Inc. Texas PAC, 10300 Lisa Cove, Austin, Texas 78733-1538

Deadline: Semiannual Report due January 15, 2013, for Candidates and Officeholders

Randel W. Brown, 2322 Town Hall Ln., Katy, Texas 77449-3605

Gladys E. Hodge, 7106 Abrams Rd., Dallas, Texas 75231-5722

Dorothy M. Olmos, 6678 Sylvan Rd., Houston, Texas 77023-4829

William R. "Bill" Walker, P.O. Box 920884, Houston, Texas 77292-0884

Deadline: Lobby Activities Report due December 10, 2012

Robert J. Tessen, 1415 Lavaca St., Austin, Texas 78701-1634

Deadline: Lobby Activities Report due February 11, 2013

Jennifer E. Sellers, P.O. Box 684501, Austin, Texas 78768

Deadline: Lobby Activities Report due March 11, 2013

Jennifer E. Sellers, P.O. Box 684501, Austin, Texas 78768

Deadline: Personal Financial Statement due April 18, 2012

Joey G. Dauben, 1408 Red Oak Creek Rd., Ovilla, Texas 75154-3412

Deadline: Personal Financial Statement due January 22, 2013

Rasuali W. Bray, 2115 Runnels St. #2109, Houston, Texas 77003

Dorothy M. Olmos, 6678 Sylvan Rd., Houston, Texas 77023-4829

TRD-201301814

David Reisman

Executive Director

Texas Ethics Commission

Filed: May 7, 2013

Texas Facilities Commission

Request for Proposals #303-4-20374-A

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-4-20374-A. TFC seeks a five (5) or ten (10) year lease of approximately 18,731 square feet of office space and acreage in Corpus Christi, Nueces County, Texas.

The deadline for questions is May 30, 2013, and the deadline for proposals is June 13, 2013 at 3:00 p.m. The award date is August 1, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=105711.

TRD-201301813

Kay Molina

General Counsel

Texas Facilities Commission

Filed: May 7, 2013

Request for Proposals #303-4-20381

The Texas Facilities Commission ("TFC"), on behalf of the Office of the Attorney General ("OAG"), announces the issuance of Request for Proposals (RFP) #303-4-20381. TFC seeks a fifty-three (53) month (4 years and 5 months total term) lease of approximately 5,589 square feet of office space in Odessa, Ector County, Texas.

The deadline for questions is June 12, 2013, and the deadline for proposals is June 21, 2013, at 3:00 p.m. The award date is July 19, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Jon Conant at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=105697.

TRD-201301815

Kay Molina

General Counsel

Texas Facilities Commission

Filed: May 7, 2013

Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held April 16, 2013, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to update the penalty matrix for Cosmetology Schools.

The revised penalty matrix for cosmetology schools address changes set forth by both the 81st Legislature, Regular Session (2009) and the 82nd Legislature (2011), which made major changes to Texas Occupations Code, Chapters 51 and 1602. The matrix was reformatted to create more classes of violations, with fewer violations in each class, and to lower penalty amounts for some violations. Changes were also made to provide for a single dollar amount penalty for most first-time violations and a more narrow range of penalties for second and third violations. The Department's Enforcement Division made some of these changes in response to public feedback and Commission concerns regarding penalties.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201301736

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: May 1, 2013



Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed for publication a notice concerning Instant Game Number 1544 "Veterans Cash." The notice was published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2795) in the *In Addition* section. On page 2798, first column, fifth paragraph, the number "19." was inadvertently included in Section 2.2.K of the notice. The number "19." should be deleted from the sentence. The sentence should read as follows:

"K. The "\$" Play Symbol will never appear on a non-winning Ticket."

No other section of the notice is affected by this revision.

TRD-201301831



Instant Game Number 1525 "Platinum Card"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1525 is "PLATINUM CARD". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1525 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1525.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1525 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWFV |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWN! |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| BAR SYMBOL | BAR |
| \$5.00 | FIVE\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FIFTN |
| \$20.00 | TWENTY |
| \$25.00 | TWY FIV |

| | |
|----------|----------|
| \$40.00 | FORTY |
| \$50.00 | FIFTY |
| \$100 | ONE HUND |
| \$500 | FIV HUND |
| \$1,000 | ONE THOU |
| \$50,000 | 50 THOU |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1525), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1525-0000001-001.

K. Pack - A Pack of "PLATINUM CARD" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PLATINUM CARD" Instant Game No. 1525 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "PLATINUM CARD" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "BAR" Play Symbol, the player wins the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical symbol patterns. Two (2) Tickets have identical symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than two (2) times.

F. The "BAR" Play Symbol (auto win) will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

H. The Top Prize Symbol will appear on every Ticket unless otherwise restricted.

I. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "PLATINUM CARD" Instant Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of

the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PLATINUM CARD" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PLATINUM CARD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "PLATINUM CARD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "PLATINUM CARD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned

by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1525. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1525 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5 | 944,000 | 7.50 |
| \$10 | 944,000 | 7.50 |
| \$20 | 141,600 | 50.00 |
| \$25 | 94,400 | 75.00 |
| \$50 | 47,259 | 149.81 |
| \$100 | 15,930 | 444.44 |
| \$500 | 472 | 15,000.00 |
| \$1,000 | 177 | 40,000.00 |
| \$50,000 | 7 | 1,011,428.57 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.24. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1525 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1525, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301747
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 2, 2013

Instant Game Number 1535 "5X the Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1535 is "5X THE MONEY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1535 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1535.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4,

6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000, and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1535 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWV |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| 5X SYMBOL | TIMES 5 |
| \$5.00 | FIVE\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FIFTN |
| \$20.00 | TWENTY |
| \$40.00 | FORTY |
| \$50.00 | FIFTY |

| | |
|----------|----------|
| \$100 | ONE HUND |
| \$500 | FIV HUND |
| \$1,000 | ONE THOU |
| \$50,000 | 50 THOU |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

H. High-Tier Prize - A prize of \$1,000, or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1535), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1535-0000001-001.

K. Pack - A Pack of "5X THE MONEY" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "5X THE MONEY" Instant Game No. 1535 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "5X THE MONEY" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical symbol patterns. Two (2) Tickets have identical symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than three (3) times.

F. The "5X" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "5X" Play Symbol will appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. The Top Prize Symbol will appear on every Ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "5X THE MONEY" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "5X THE MONEY" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "5X THE MONEY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "5X THE MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "5X THE MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make

payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1535. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1535 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5 | 755,200 | 9.38 |
| \$10 | 991,200 | 7.14 |
| \$20 | 188,800 | 37.50 |
| \$50 | 91,096 | 77.72 |
| \$100 | 11,800 | 600.00 |
| \$500 | 826 | 8,571.43 |
| \$1,000 | 110 | 64,363.64 |
| \$50,000 | 7 | 1,011,428.57 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1535 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1535, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301772

Bob Biard

General Counsel

Texas Lottery Commission

Filed: May 3, 2013



Instant Game Number 1541 "Find the 9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1541 is "FIND THE 9'S". The play style is "match 3 of x".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1541 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1541.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$1.00, \$2.00, \$3.00, \$50.00, \$200, and 9 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1541 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|----------|
| \$1.00 | ONE\$ |
| \$2.00 | TWO\$ |
| \$3.00 | THREES |
| \$50.00 | FIFTY |
| \$200 | TWO HUND |
| 9 SYMBOL | NINE |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$9.00, or \$19.00.

G. Mid-Tier Prize - A prize of \$50.00, \$99.00, or \$200.

H. High-Tier Prize - A prize of \$3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1541), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1541-0000001-001.

K. Pack - A Pack of "FIND THE 9'S" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 1541 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "FIND THE 9'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching Play Symbol amounts in the play area, the player wins that amount. If a player reveals any 9 Play Symbol in the play area, the player wins the corresponding prize

in the prize legend. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 6 (six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 6 (six) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. No Ticket will contain two sets of three identical prize amounts.

C. No Ticket will contain 4 or more identical prize amounts.

D. No Ticket will contain more than four "9" Play Symbols.

E. No Ticket will contain one or more "9" Play Symbols and three identical Prize Symbols.

F. The "9" Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. Tickets can only win once and will win only the highest amount shown as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$50.00, \$99.00, or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$99.00, or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above

prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of \$3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account,

with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned

by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1541. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1541 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$1.00 | 1,411,200 | 7.14 |
| \$2.00 | 873,600 | 11.54 |
| \$3.00 | 268,800 | 37.50 |
| \$9.00 | 100,800 | 100.00 |
| \$19.00 | 22,806 | 441.99 |
| \$50.00 | 5,040 | 2,000.00 |
| \$99.00 | 1,260 | 8,000.00 |
| \$200 | 630 | 16,000.00 |
| \$3,000 | 84 | 120,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1541 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1541, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301792

Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 6, 2013

Instant Game Number 1547 "\$250,000 Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1547 is "\$250,000 BINGO". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1547 shall be \$10.00 per Ticket.

1.2 Definitions in Instant Game No. 1547.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, 7 SYMBOL, CLOVER SYMBOL, LEMON SYMBOL, POT OF GOLD SYMBOL, CROWN SYMBOL, BELL SYMBOL, CHERRY SYMBOL, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$100, \$500, \$1,000, TEN SYMBOL, FIFTN SYMBOL, TWENTY SYMBOL, TWYFIV SYMBOL, THIRTY SYMBOL, FORTY SYMBOL, FIFTY SYMBOL, ONEHUN SYMBOL, FIVHUN SYMBOL, ONETHOU SYMBOL, TRY AGAIN SYMBOL, MAYBE NEXT TIME SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14,

B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1547 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| B01 | |
| B02 | |
| B03 | |
| B04 | |
| B05 | |
| B06 | |
| B07 | |
| B08 | |
| B09 | |
| B10 | |
| B11 | |
| B12 | |
| B13 | |
| B14 | |
| B15 | |
| I16 | |
| I17 | |
| I18 | |
| I19 | |
| I20 | |
| I21 | |
| I22 | |
| I23 | |
| I24 | |
| I25 | |
| I26 | |
| I27 | |
| I28 | |
| I29 | |
| I30 | |
| N31 | |
| N32 | |
| N33 | |
| N34 | |
| N35 | |
| N36 | |
| N37 | |
| N38 | |
| N39 | |
| N40 | |
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| 75 | |
| FREE | |
| STACK OF BILLS SYMBOL | BILLS |
| DOLLAR SIGN SYMBOL | MONEY |
| GOLD BAR SYMBOL | GOLD BAR |
| MONEY BAG SYMBOL | BAG |
| 7 SYMBOL | SEVEN |
| CLOVER SYMBOL | CLOVER |
| LEMON SYMBOL | LEMON |
| POT OF GOLD SYMBOL | POTGOLD |
| CROWN SYMBOL | CROWN |
| BELL SYMBOL | BELL |
| CHERRY SYMBOL | CHERRY |
| \$10.00 | TENS |
| \$15.00 | FIFTN |
| \$20.00 | TWENTY |
| \$25.00 | TWY FIV |
| \$30.00 | THIRTY |
| \$40.00 | FORTY |
| \$50.00 | FIFTY |
| \$100 | ONE HUND |
| \$500 | FIV HUND |
| \$1,000 | ONE THOU |
| TEN SYMBOL | DOLLARS |
| FIFTN SYMBOL | DOLLARS |
| TWENTY SYMBOL | DOLLARS |
| TWYFIV SYMBOL | DOLLARS |
| THIRTY SYMBOL | DOLLARS |
| FORTY SYMBOL | DOLLARS |
| FIFTY SYMBOL | DOLLARS |
| ONEHUN SYMBOL | DOLLARS |
| FIVHUN SYMBOL | DOLLARS |
| ONETHOU SYMBOL | DOLLARS |
| TRY AGAIN SYMBOL | AGAIN |
| MAYBE NEXT TIME SYMBOL | NEXTTIME |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$40.00, \$50.00, \$100, or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1547), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1547-0000001-001.

K. Pack - A Pack of "\$250,000 BINGO" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$250,000 BINGO" Instant Game No. 1547 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "\$250,000 BINGO" Instant Game is determined once the latex on the Ticket is scratched off to expose 204 (two hundred four) Play Symbols. For the game SLOTS, if a player reveals 3 matching Play Symbols in the same PULL across, the player wins the PRIZE shown for that PULL. For the game REVEAL, if a player reveals a prize amount Play Symbol, the player wins that amount instantly. For the game BINGO MATCH, if a player matches any of the "YOUR BINGO NUMBERS" Play Symbols to any of the "WINNING BINGO NUMBERS" Play Symbols, the player wins the PRIZE for that number. For the game BINGO, using the "CALLER'S CARD" numbers, which include all of the "YOUR BINGO NUMBERS" Play Symbols and the "WINNING BINGO NUMBERS" Play Symbols, the player must scratch only those numbers on the six (6) "BINGO" cards that match the "CALLER'S CARD" numbers. Also, the player must scratch the "FREE" spaces. If a player matches all numbers in a complete vertical, horizontal or diagonal line; all numbers in all four (4) corners; or all numbers to complete an "X" [eight (8) numbers plus the "FREE" space] on the same "BINGO" Card, the player wins the amount indicated beside that "BINGO" Card. Only one prize per Card. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 204 (two hundred four) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol Captions.
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 204 (two hundred four) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 204 (two hundred four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 204 (two hundred four) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same symbols in the same positions.

C. The \$1,000 Prize Symbol will appear on every Ticket unless otherwise restricted.

D. SLOTS: Non-winning Prize Symbols will be different.

E. SLOTS: A non-winning Prize Symbol will never be the same as the winning Prize Symbol.

F. SLOTS: Non-winning Play Symbols will never appear more than two (2) times.

G. BINGO MATCH AND BINGO: Non-winning Prize Symbols will never appear more than three (3) times.

H. BINGO MATCH AND BINGO: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. BINGO MATCH AND BINGO: No individual "BINGO" Card will win more than one (1) prize (i.e., only highest prize paid per card).

J. BINGO MATCH AND BINGO: All "BINGO" Cards will be different on a Ticket. Two cards are identical if and only if they have the same Play Symbols in the same positions.

K. BINGO MATCH AND BINGO: The five (5) "WINNING BINGO NUMBERS" Play Symbols will all be different.

L. BINGO MATCH AND BINGO: "YOUR BINGO NUMBERS" Play Symbols will all be different.

M. BINGO MATCH AND BINGO: All Tickets will have all of the "WINNING BINGO NUMBERS" and "YOUR BINGO NUMBERS" Play Symbols reveal a number in at least one "BINGO" Card.

N. BINGO MATCH AND BINGO: There will be one (1) "FREE" Play Symbol per card fixed in the center of each "BINGO" Card.

O. BINGO MATCH AND BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60), O (61-75).

2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 BINGO" Instant Game prize of \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$30.00, \$40.00, \$50.00, \$100, or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "\$250,000 BINGO" Instant Game prize of \$1,000 or \$250,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$250,000 BINGO" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$250,000 BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$250,000 BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant

Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of

the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1547. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1547 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$10 | 840,000 | 7.14 |
| \$15 | 480,000 | 12.50 |
| \$20 | 420,000 | 14.29 |
| \$25 | 140,000 | 42.86 |
| \$30 | 100,000 | 60.00 |
| \$40 | 70,000 | 85.71 |
| \$50 | 53,000 | 113.21 |
| \$100 | 18,000 | 333.33 |
| \$500 | 4,000 | 1,500.00 |
| \$1,000 | 750 | 8,000.00 |
| \$250,000 | 6 | 1,000,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1547 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1547, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301793

Bob Biard

General Counsel

Texas Lottery Commission

Filed: May 6, 2013



Instant Game Number 1552 "Platinum Payout"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1552 is "PLATINUM PAYOUT". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1552 shall be \$10.00 per Ticket.

1.2 Definitions in Instant Game No. 1552.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, NECKLACE SYMBOL, RING SYMBOL, SILVER BAR SYMBOL,

\$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, and \$250,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1552 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------------|----------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWFO |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFO |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| NECKLACE SYMBOL | NKLCE |
| RING SYMBOL | WIN\$200 |
| SILVER BAR SYMBOL | WINALL |
| \$10.00 | TEN\$ |
| \$20.00 | TWENTY |
| \$25.00 | TWY FIV |

| | |
|-----------|----------|
| \$50.00 | FIFTY |
| \$100 | ONE HUND |
| \$200 | TWO HUND |
| \$500 | FIV HUND |
| \$1,000 | ONE THOU |
| \$10,000 | 10 THOU |
| \$250,000 | TFY THOU |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$200, or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000, or \$250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1552), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1552-0000001-001.

K. Pack - A Pack of "PLATINUM PAYOUT" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PLATINUM PAYOUT" Instant Game No. 1552 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "PLATINUM PAYOUT" Instant Game is determined once the latex on the Ticket is scratched off to expose 56 (fifty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "NECKLACE" Play Symbol, the player wins the prize for that symbol. If a player reveals a "RING" Play Symbol, the player wins \$200. If a player reveals a "SILVER BAR" Play Symbol, the player WINS ALL 25 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 56 (fifty-six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 56 (fifty-six) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than four identical non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No duplicate WINNING NUMBERS Play Symbols on a Ticket.

F. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

H. The "NECKLACE" (auto win) Play Symbol will never appear more than once on a Ticket.

I. The "RING" (win \$200) Play Symbol will never appear more than once on a Ticket.

J. The "RING" (win \$200) Play Symbol will always appear with the \$200 Prize Symbol.

K. The "SILVER BAR" (win all) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

L. When the "SILVER BAR" (win all) Play Symbol appears, there will be no occurrence of any of YOUR NUMBERS Play Symbols matching to any WINNING NUMBERS Play Symbol.

M. When the "SILVER BAR" (win all) Play Symbol appears, there will be no occurrence of the "NECKLACE" (auto win) or "RING" (win \$200) Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "PLATINUM PAYOUT" Instant Game prize of \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas

Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200, or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PLATINUM PAYOUT" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$250,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PLATINUM PAYOUT" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "PLATINUM PAYOUT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "PLATINUM PAYOUT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 Tickets in the Instant Game No. 1552. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1552 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$10 | 571,200 | 7.14 |
| \$20 | 571,200 | 7.14 |
| \$25 | 40,800 | 100.00 |
| \$50 | 61,200 | 66.67 |
| \$100 | 16,830 | 242.42 |
| \$200 | 8,364 | 487.80 |
| \$500 | 3,060 | 1,333.33 |
| \$1,000 | 238 | 17,142.86 |
| \$5,000 | 68 | 60,000.00 |
| \$10,000 | 88 | 46,363.64 |
| \$250,000 | 4 | 1,020,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.20. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1552 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1552, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301773

Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 3, 2013



Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.404, relating to License Fees, will be held on Wednesday, May 29, 2013, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Eric Williams, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5241 at least 72 hours prior to the public hearing.

TRD-201301844
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 8, 2013



Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Bionomics, Inc. (TLLRWDC #1-0032-00)

P.O. Box 817

Kingston, TN 37763

The application is being placed on the Compact Commission web site, www.tllrwdec.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe Street, #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdec.org.

TRD-201301740
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: May 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Philotechnics, Ltd. (TLLRWDC #1-0033-00)

201 Renovare Blvd.

Oak Ridge, TN 37830

The application is being placed on the Compact Commission web site, www.tllrwdec.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdec.org.

TRD-201301741

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: May 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

RAM Services, Inc. (TLLRWDC #1-0034-00)

510 County Highway V

Two Rivers, WI 54241

The application is being placed on the Compact Commission web site, www.tllrwdec.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdec.org.

TRD-201301742

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: May 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Sacramento Municipal Utility District ("SMUD") (TLLRWDC #1-0035-00)

Rancho Seco Assets Power Generation

14440 Twin Cities Road

Herald, CA 95638

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201301743

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: May 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Thomas Gray & Associates (TLLRWDC #1-0036-00)

3106 S. Faith Home Road

Turlock, CA 95380

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201301744

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: May 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Xcel Energy-Prairie Island Nuclear Generating Plant (1-0037-00)

1717 Wakonade Drive East

Welch, MN 55089

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201301745

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: May 2, 2013



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

ZionSolutions (TLLRWDC #1-0038-00)

101 Shiloh Blvd.

Zion, IL 60099

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by May 30, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attention: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tlr-wdccc.org.

TRD-201301746

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: May 2, 2013



Maverick County

Request for Comments and Proposals: Additional Medicaid Beds

Notice to solicit comments on whether a new Medicaid nursing facility should be requested in Maverick County and/or proposals from persons or entities interested in providing additional Medicaid-certified beds in Maverick County.

Department of Aging and Disability Services (DADS) rule 40 TAC §19.2322(h)(6) permits the County Commissioners Court of a rural county with a population of less than 100,000 and no more than two Medicaid-certified nursing facilities to request that DADS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Maverick County Commissioners Court is considering requesting that DADS contract for additional Medicaid nursing facility beds in Maverick County. The Commissioners Court is soliciting public input and comments on whether the request should be made. Further, the Commissioners Court seeks proposals from qualified persons or entities interested in providing additional Medicaid nursing home services in Maverick County.

If you wish to make comments in this regard or if you wish to make a proposal to the Commissioners Court, these comments and/or proposals must be submitted in writing on or before June 17, 2013 to the Maverick County Judge's office, 500 Quarry Street, Suite 3, Eagle Pass, Texas 78852.

TRD-201301846

Leopoldo Vielmo III

Administrative Assistant to the County Judge

Maverick County

Filed: May 8, 2013



North Central Texas Council of Governments

Request for Proposals for the North Central Texas Regional Transit Travel Survey in 2014

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consultant firms to conduct the North Central Texas Regional Transit Travel Survey in 2014. This survey would cover bus, light rail, and commuter rail lines operated by Dallas Area Rapid Transit (DART), Denton County Transportation Authority (DCTA), and the Fort Worth Transportation Authority (The T). The purpose of the survey is to provide updated information regarding the transit users' travel patterns and trip-making behavior to assist the transit agencies in their planning process and for use in NCTCOG's Dallas-Fort Worth Regional Travel Model (DFX).

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, June 21, 2013, to Kathy Yu, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, May 17, 2013. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201301838

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: May 8, 2013



Request for Proposals for the Regional Intelligent Transportation System Architecture Update

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consultant firm(s) to prepare an update to the Regional Intelligent Transportation System (ITS) Architecture for the North Central Texas Region including an update to the project-level ITS architecture compliance process and the development of an ITS Strategic Deployment Plan that will identify and prioritize ITS projects for future implementation. The North Texas Regional ITS Architecture is the Regional ITS Architecture for the North Central Texas Region. The Regional ITS Architecture establishes a blueprint for transportation integration and needs to be updated periodically to reflect technological advances in ITS. In addition, the Regional ITS Architecture needs to maintain consistency with the National ITS Architecture. The purpose of this project is to update the Architecture and to develop a Maintenance Plan for the Architecture, as well as a Strategic Deployment Plan for future ITS infrastructure deployment and software integration projects.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, June 14, 2013, to Marian Thompson, P.E., Transportation System Operations Supervisor, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for

Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, May 17, 2013.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be

discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201301832

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: May 8, 2013



Texas Board of Nursing

Disciplinary Guidelines for Criminal Conduct

The Texas Board of Nursing (Board) is proposing amendments to 22 TAC §§213.27, 213.28, 213.29, 213.30, and 213.33, concerning Practice and Procedure. These rule proposals are published in the *Proposed Rules* section of the *Texas Register*.

Specifically, the proposals affect the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines), which are incorporated by reference in §§213.27, 213.28, 213.29, 213.30, and 213.33. A copy of the amended Guidelines follows.

Disciplinary Guidelines for Criminal Conduct

This document is provided by the Board to inform licensees, applicants, and the public of the Board's view of the effect of the first commission of certain crimes on nursing licensure and eligibility for nursing licensure. In some instances, the document may provide guidance when multiple crimes are at issue. In addition to utilizing this guideline, the Board may require evaluations from Board-approved evaluators to better determine the appropriate sanction and/or to determine whether a person is safe to practice nursing and is able to comply with the Nursing Practice Act (NPA) and the Board's rules and regulations, particularly when the underlying criminal offense involves alcohol, drugs, or controlled substances. This list is not exhaustive. In cases involving an offense that is not specifically listed in this guideline or a violation of another state law, federal law, the Uniform Code of Military Justice, or other law, the appropriate sanction shall be determined by comparing that offense to the listed crimes in this guideline that contain substantially similar elements. To the extent applicable, this guideline should also be considered in conjunction with the recommended sanctions in the Board's Disciplinary Matrix, located at 22 Texas Administrative Code §213.33(b). This guideline does not apply to criminal offenses that are addressed by the Board's minor criminal history policies. Further, this guideline applies to criminal offenses as those offenses have been addressed and/or adjudicated by the criminal justice/penal system, without re-litigating the underlying factual bases of the corresponding judicial orders**.

For further information, please review the Texas Occupations Code Chapter 301 (NPA), the Board's rules, located at 22 Texas Administrative Code Chapters 211 - 227, including §§213.27 - 213.30 and 213.33, and the Board's disciplinary sanction policies located on the Board's web site, at www.bon.texas.gov. Texas Occupations Code Chapter 53 may also be applicable.

The guideline provides a recommended sanction or range of sanctions for each offense. In order to determine the appropriate sanction in a particular case, each case must be considered on its own merits, taking into account the presence of aggravating and/or mitigating factors. If multiple offenses are present in a single case, the most severe sanction recommended for any one of the individual offenses should be imposed.

The following list includes some of the factors the Board may use in its case-by-case analysis:

- the nature and seriousness of the crime, i.e. the presence or absence of criminal plan or premeditation, the presence of contributing influences, evidence of immature thought process/judgment at the time of activity, and classification of offense as felony or misdemeanor, etc.;
- a person's failure to disclose a criminal offense to the Board;
- the actual damages, physical or otherwise, resulting from the criminal activity;
- the extent and nature of the person's past criminal activity;
- if the person's conduct evidences a lack of truthfulness or trustworthiness;
- the age of the person when the crime was committed;

- the amount of time that has elapsed since the person's last criminal activity;
- the work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release*;
- a record of steady employment and whether the person has supported his or her dependents;
- evidence of the person's present fitness and professional character, including letters of recommendation from prosecutors, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the person;
- if the person has paid all outstanding court costs, supervision fees, fines, and evidence of restitution to both victim and community;
- if the person's conduct indicates an inability to practice nursing in an autonomous role with patients/clients, their families and significant others, and members of the public who are or who may become physically, emotionally or financially vulnerable;
- evidence of remorse;
- evidence of current maturity and personal accountability;
- evidence of having learned from past mistakes;
- evidence of current support structures that will prevent future criminal activity;
- evidence of current ability to practice in accordance with the NPA, Board rules, and generally accepted standards of nursing;
- the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
- if imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision*;
- if the person's conduct resulted in the revocation of probation/community supervision*;
- evidence of the person's safe practice;

- successful completion of probation/community supervision;
- if criminal activity is due to, associated with, or related to substance abuse or chemical dependency, including alcohol, evidence of evaluation by a Board approved evaluator, treatment (written verification of compliance with any treatment), after care and support group attendance, and evidence of random drug screening; and
- if criminal activity is due to, associated with, or related to mental illness, evidence of evaluation by a Board approved evaluator, including prognosis, evidence of treatment (written verification of compliance with any treatment), and any medication regime.

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. §§, 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| For any §301.4535 crime where the judicial order** occurred prior to September 1, 2005, the Board reserves the right to require and/or request a physical and/or psychological evaluation before considering the retention or issuance of a nursing license. | | | | | |
| ***Abandonment/ Endangerment of a Child | F | <u>22.041</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Agree to Abduct Child for Remuneration: Younger than 18 | F | <u>25.031</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Aiding Suicide: Serious Bodily Injury/Death | F | <u>22.08</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order*** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | Deny/Revoke. If prior to September 1, 2005, and not on felony probation. Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | |
| **** Assault, Aggravated | F | <u>22.02</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of license is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation. Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| **** Attempt, Conspiracy, or Solicitation of ch. 62 offense | F, M | ch. 62 | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of license is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation. Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| ***Burglary (if punishable under Penal Code §30.02(d) and ch. 62 offense) | F | ch. 62 (§62.001(5) (D)) | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Capital Murder | F | 19.03 | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Child Pornography, Possession or Promotion | F | 43.26(a)(1) (ch. 62) | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. | Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | |
| ***Continuous Sexual Abuse of Young Child or Children | F | 21.02 | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ****Indecency w/Child | F | 21.11 (ch. 62) | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ****Indecent exposure s. 2, if meets ch. 62 requirements | M | 21.08 (ch. 62) | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | |
| *** Injury to Child/Elderly, Disabled | F | <u>22.04</u> | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| **** Kidnapping | F | <u>20.03, 20.04</u> (ch. 62) | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| ***Manslaughter | F | 19.04 | Revocation: Denial of License Required by TOC §301.4535. | a minimum of two (2) years. If on or after September 1, 2005, revocation: denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ****Murder | F | 19.02 | Revocation: Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation: denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| ***Offenses for Which Registration as a Sex Offender is Required Under Ch. 62 | F, M | <u>§62.001(5)</u> | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offenses that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Online Solicitation of a Minor | F | <u>§33.021(b)(1)(c) (DE: ch. 62)</u> | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Prostitution, Compelling | F | <u>43.05 (ch. 62)</u> | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue | Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | |
| ****Protective Order, Violation | F | <u>25.07, 25.071</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ****Robbery | F | <u>29.02</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ****Robbery, Aggravated | F | <u>29.03</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to | Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred >5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | |
| ****Sale or Purchase of a Child | F | <u>25.08</u> | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ****Sexual Assault | F | <u>22.01.1 (ch. 62)</u> | Revocation/Denial of Licensure Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| ***Sexual Assault, Aggravated | F | <u>22.021 (ch. 62)</u> | Revocation/Denial of License Required by TOC §301.4535. | stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Sexual Conduct, Prohibited | F | <u>25.02 (ch. 62)</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| ***Sexual Performance by Child | F | <u>43.25(b), 24(d) (ch. 62)</u> | Revocation/Denial of License Required by TOC §301.4535. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then | Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | |
| ***Unlawful Restraint | F | <u>20.02</u> | Revocation/Denial of Licensure Required by TOC §301.4335. | If on or after September 1, 2005, revocation/denial of licensure is required by statute. If prior to September 1, 2005, and on felony probation, then Deny/Revoke. If prior to September 1, 2005, and not on felony probation, Deny/Revoke/Suspend or Issue License with Stipulations. Suspension may be enforced or probated. Any probation or stipulation period should be for a minimum of two (2) years. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4335. |
| Aggravated Perjury: Offense Against Public Administration that involves knowingly engaging in deceptive and dishonest conduct by making a false statement in connection with an official proceeding. | F | <u>37.03</u> | Deny/Revoke/Suspend License. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony probation, impose discipline/issue license with stipulations. A forensic psychological evaluation with or without a polygraph examination may be requested. | Such conduct raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Nurses must be honest witnesses to events that occur and are relied upon by other healthcare professionals to be honest and forthcoming. Further, nurses have the implied trust of the public. Deceptive and dishonest behavior raises serious concerns about a person's propensity to lie and whether the person will continue such behavior and jeopardize the effectiveness of |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Prob. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | | patient care in the future. |
| Aiding Suicide: Offense against the Person that involves intent to promote or assist the commission of suicide by another person. | M | <u>22.08</u> | 0-3 yrs old, impose discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations.. | Issue license with or without stipulations. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| Arson: Offense Against Property that involves intent to destroy or damage property and involves knowledge that financial or personal harm may result and/or includes the reckless endangerment of a person's life or safety. | F | <u>28.02(d)</u> | Deny/Revoke License. | If on felony probation, then Deny/Revoke. If not on felony probation, impose discipline/issue license with stipulations. | Being a nurse and having autonomy in the care of a vulnerable population may give that individual an opportunity to exploit the patient, employer, or other entities dependent on the professional character of a nurse. Patients would be vulnerable to similar acts involving intent to destroy property or inflict financial harm, as well as reckless acts that may harm patients or the public. Further, research studies suggest that individuals who commit these types of crimes may have underlying psychopathology. |
| Assault: Offense Against the Person that involves intentionally, knowingly, or recklessly causing bodily injury to another person. | F, M | <u>22.01</u> | If felony, then Deny/Revoke License. For misdemeanor, if 0-3 yrs old, issue license with stipulations; if 4-5 yrs old, issue license with or without stipulations. | For felony, if on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony probation, impose discipline/issue license with stipulations. If misdemeanor, issue license with or without stipulations. | Stress inherent in the practice of nursing and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed an assaultive offense raises serious questions regarding his/her ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. |
| Bail Jumping and Failure to Appear: Offense Against Public Administration that involves intentionally or knowingly failing | F, M | <u>38.10</u> | For felony, 0-3 yrs old Deny/Revoke/Suspend. 4-5 yrs old, if on | If on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred >5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| to comply with a judicial order to appear in accordance with the terms of his/her release. | | | felony probation, then Deny/Revoke/Suspend. If not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | probation, impose discipline/issue license with stipulations. If a misdemeanor, issue license with or without stipulations. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, keep promises and honor obligations, be accountable for his/her behavior and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| Bribery: Offense Against Public Administration that involves intentionally or knowingly conferring, agreeing to confer, soliciting, or accepting benefits as consideration for a person's vote, decision, or recommendation. | F | <u>36.02</u> | Deny/Revoke/Suspend License. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony probation, impose discipline/issue license with stipulations. A forensic psychological evaluation with or without a polygraph examination may be requested. | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, think and act rationally, be accountable for his/her behavior, and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| Burglary: Offense Against Property that involves entering | F | <u>30.02</u> | Deny/Revoke License. | If on felony probation, then Deny/Revoke/Suspend; if not on | Nurses have access to persons who are vulnerable due to illness or injury. Patients are |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| another's property with intent to commit theft or harm to another person. | | | | felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | frequently in a vulnerable position to be exploited. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns about whether a nurse can be trusted to respect a patient's property/possessions in the future. A nursing license would provide unfettered opportunity and access to a patient's person and property. |
| Burglary of Vehicles; Offense Against Property that involves breaking into a vehicle with the intent to commit a felony or theft. | F, M | 30.04 | For felony, 0-3 yrs old Deny/Revoke. 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend. A suspension may be enforced or probated. If not on felony probation, impose discipline/issue license with stipulations. If a misdemeanor, impose discipline/ issue license with stipulations. For either a felony or misdemeanor, a forensic psychological | For felony, if on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony probation, impose discipline/issue license with stipulations. For misdemeanor, issue license with or without stipulations. For either a felony or a misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | Nurses have access to persons who are vulnerable due to illness or injury. Patients are frequently in a vulnerable position to be exploited. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns about whether a nurse can be trusted to respect a patient's property/possessions in the future. A nursing license would provide unfettered opportunity and access to a patient's person and property. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (for Crim. Prob. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | evaluation with or without a polygraph examination may be requested. | | |
| Credit Card or Debit Card Abuse: Offense Against Property that involves an intent to obtain a benefit fraudulently through the use of a credit or debit card that is expired or revoked, has not been issued to him/her, and/or without the consent of the cardholder. | F | <u>32.31</u> | Deny/Revoke: 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, impose discipline/issue license with stipulations. A forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony probation, impose discipline/issue license with stipulations. A forensic psychological evaluation with or without a polygraph examination may be requested. | Nurses have access to persons who are vulnerable due to illness or injury. Patients are frequently in a vulnerable position to be exploited. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Crimes involving fraud, theft, and deception raise serious concerns whether a nurse can be trusted to respect a patient's property/possessions in the future. A nursing license would provide unfettered opportunity and access to a patient's person and property. |
| Criminal Attempt or Conspiracy: Inchoate (Preparatory) Offense. | F | <u>15.01, 15.02</u> | Inchoate Offense. Please refer to the sanction listed in the intended offense. May consider sanction one category lower than sanction listed in the intended offense. | Inchoate Offense. Please refer to the sanction listed in the intended offense. May consider sanction one category lower than sanction listed in the intended offense. | Please refer to the rationale listed in the intended offense. |
| Criminal Mischief: Offense Against Property that involves destruction to or damage of property and involves knowledge that financial or personal harm | F | <u>28.03</u> | Deny/Revoke/ Suspend License. Suspension may be enforced or probated. | If on felony probation, then Deny/Revoke/Suspend. Suspension may be enforced or probated. If not on felony probation, impose | Being a nurse and having autonomy in the care of a vulnerable population may give that individual an opportunity to exploit the patient, employer, or other entities dependent on the professional character of a nurse. Patients would |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| may result. | | | A forensic psychological evaluation with or without a polygraph examination may be requested. | discipline/issue license with stipulations. A forensic psychological evaluation with or without a polygraph examination may be requested. | be vulnerable to similar acts of property damage or personal injury. |
| Criminally Negligent Homicide: Offense Against the Person that involves behavior where the offender engages in conduct that falls below the standard required of ordinary people and a death results. | F | <u>19.05</u> | 0-3 yrs old, Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | If on felony probation, then Deny/Revoke. If not on felony probation, impose discipline/issue license with stipulations. | Nurses, by virtue of their license, must hold to a higher standard of conduct where the risk to life and limb is the norm. A person who engages in conduct that falls below ordinary standards when life is at risk raises serious questions about the ability to comply when there is a higher standard of care and where a patient's health is at risk. |
| Criminal Nonsupport: Offense Against the Family that involves the intentional or knowing failure to provide financial support for a person's child. | F | <u>25.05</u> | 0-3 yrs old, Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, impose discipline/issue license with stipulations if restitution has been paid. Suspension will be enforced, at a minimum, until restitution has been paid; an individual will not be eligible for licensure until restitution has been paid. | If on felony probation, then Deny/Revoke/Suspend. If not on felony probation, impose discipline/issue license with stipulations if restitution has been paid. Suspension may be enforced or probated. A suspension will be enforced, at a minimum, until restitution has been paid; an individual will not be eligible for licensure until restitution has been paid. | Children are vulnerable by nature of their reliance on their parents for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. Individuals who fail to provide support for a vulnerable child raise serious concerns whether they are capable of providing autonomous care to vulnerable individuals in their care. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: for licensure until restitution has been paid. | If judicial order** occurred ≥5 yrs. ago and 5th yr. probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Criminal Trespass: Offense Against Property that involves entering or remaining on or in the property of another without consent. | M | 30.05(d) | 0-3 yrs old. Impose discipline/issue license with stipulations: 4-5 yrs. old, issue license with or without stipulations. | Issue license with or without stipulations. | Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship. Trespass crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. |
| Cruelty to Animals: Offense Against Public Order and Decency that involves the intentional or knowing infliction of torture on, neglect of, or unreasonable abandonment of a domesticated or captured animal. | F, M | 42.09 | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. Suspension may be enforced or probated. | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, issue license with or without stipulations. For felony or misdemeanor, a mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | Animals are vulnerable by nature of their reliance on people for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury and the dependent nature of the nurse-patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. When harm occurs to these individuals, many times they are unable to communicate the harm inflicted. Individuals who commit crimes involving cruelty to animals raise serious concerns whether they are capable of providing autonomous care to vulnerable individuals in their care. Further, research studies suggest that individuals who commit these types of crimes may be more likely to engage in similar behavior towards humans. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred 25 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | | |
| Deadly conduct: Offense Against the Person that involves causing bodily injury to another person. | M | 22.05(a) | Impose discipline/issue license with stipulations. | Issue license with or without stipulations. | Stress inherent in the practice of nursing and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care. |
| Driving While Intoxicated X 3/ Driving While Intoxicated X 2; Offenses Against Public Health, Safety, and Morals that by the repetitiveness of the conduct indicates a possible issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety. | F, M | 49.09 | If felony, then Deny/Revoke/ Suspend. A suspension may be enforced or probated. In order to be eligible for a probated suspension, an individual must provide verifiable evidence of successful completion of treatment, 12 consecutive months of sobriety, and successful completion of at least one year of felony probation. A | For felony or misdemeanor, impose discipline/issue license with stipulations. In order to be eligible for a stipulated license, an individual must provide verifiable evidence of successful completion of treatment, 12 consecutive months of sobriety, and successful completion of at least one year of felony probation. A license may be suspended or denied until, at a minimum, an individual is able to provide such evidence. An individual may be eligible for a peer assistance program if not on felony probation. A chemical dependency | Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients and/or the public and demonstrate a potential inability to practice nursing with reasonable skill and safety. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | <p>suspension will be enforced, at a minimum, until an individual is able to provide such evidence. Any probation period should be a minimum of two years. An individual may be eligible for a peer assistance program if not on felony probation.</p> <p>For a misdemeanor, if verifiable evidence of successful completion of treatment and 12 consecutive months of sobriety, impose discipline/issue license with stipulations or a peer assistance program. If no proof of successful completion of treatment and 12 consecutive months of sobriety, Deny/Revoke; Suspend, at a minimum, until individual is able to provide such evidence.</p> | | |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Driving While Intoxicated With Child Passenger: Offense Against Public Health, Safety, and Morals that involves operating a motor vehicle while intoxicated when the vehicle is occupied by a passenger under the age of 15. | F | 49.045 | For either felony or misdemeanor, a chemical dependency evaluation may be required. | Impose discipline/issue license with stipulations. In order to be eligible for a stipulated license, an individual must provide verifiable evidence of successful completion of treatment, 12 consecutive months of sobriety, and successful completion of at least one year of felony probation. A license may be suspended or denied, at a minimum, until an individual is able to provide such evidence. An individual may be eligible for a peer assistance program if not on felony probation. A chemical dependency evaluation may be required. | Such behavior could indicate a possible issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety. Children are vulnerable by nature of their reliance on their parents for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients and/or the public and demonstrate a potential inability to practice nursing with reasonable skill and safety. Further, individuals who place vulnerable children in harmful circumstances raise serious concerns about whether they are capable of providing autonomous care to vulnerable individuals in their care. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | An individual may be eligible for a peer assistance program if not on felony probation. A chemical dependency evaluation may be required. | | |
| Drug Violations: Crimes involving drugs that include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code. | F, M | Health & Safety Code Chs. <u>481</u> , <u>482</u> , <u>483</u> | If felony, then Deny/Revoke/Suspend. A suspension may be enforced or probated. In order to be eligible for a probated suspension, an individual must provide verifiable evidence of successful completion of treatment. 12 consecutive months of sobriety, and successful completion of at least one year of felony probation. A suspension will be enforced, at a minimum, until an | For felony or misdemeanor, impose discipline/issue license with stipulations. In order to be eligible for a stipulated license, an individual must provide verifiable evidence of successful completion of treatment, 12 consecutive months of sobriety, and successful completion of at least one year of felony probation. A license may be suspended or denied until, at a minimum, an individual is able to provide such evidence. An individual may be eligible for a peer assistance program if not on felony probation. A chemical dependency evaluation may be required. | Nursing allows access to medications, Rx pads, and physician or DEA authorizations to obtain them. Nurses handle and administer drugs. Controlled substances are ubiquitous in nursing practice. A person who has engaged in behaviors in violation of controlled substances laws raises concerns about the ability to practice nursing safely. A nursing license provides access and opportunity to repeat this type of criminal conduct. Additionally, violations of controlled substances laws which have resulted in use and abuse of controlled substances may affect a nurse's cognitive ability to perform the duties of the occupation safely. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | <p>individual is able to provide such evidence. Any probation period should be a minimum of two years. An individual may be eligible for a peer assistance program if not on felony probation.</p> <p>For a misdemeanor, if verifiable evidence of successful completion of treatment and 12 consecutive months of sobriety, impose discipline/issue license with stipulations or a peer assistance program.</p> <p>If no proof of successful completion of treatment and 12 consecutive months of sobriety, Deny/Revoke/ Suspend, at a minimum, until individual is able to provide such</p> | | |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Evading Arrest or Detention; Offense Against Public Administration that involves intentionally fleeing from a known police officer or federal investigator who is lawfully attempting to detain or arrest him/her. | F, M | 38.04 | evidence. For either felony or misdemeanor, a chemical dependency evaluation may be required. | | Such behavior raises questions about an individual's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, keep promises and honor obligations, be accountable for his/her behavior, and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |

| OFFENSE | PENALTY F -- Felony M -- Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | without a polygraph examination may be requested. | | |
| Failure to Identify: Offense Against Public Administration that involves intentionally refusing to provide and/or providing false identifying information to a police officer who has lawfully arrested or detained him/her and requested the information. | M | <u>38.02</u> | Impose discipline/issue license with stipulations. | Issue license with or without stipulations. | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, keep promises and honor obligations, be accountable for his/her behavior, and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| False Report or Statement: Offense Against Property that involves intentionally or knowingly making a false material representation to obtain money or property. | F, M | <u>32.32, 42.06</u> | For felony, 0-3 yrs old, Deny/Revoke; 4-5 yrs old, if on felony probation, Deny/Revoke/ Suspend. If not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, 0-3 yrs, Deny/Revoke/ Suspend. 4-5 yrs | For felony, if on felony probation, then Deny/Revoke; Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, issue license with or without stipulations. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |

| OFFENSE | PENALTY F -- Felony M -- Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | old, impose discipline/issue license with stipulations. Suspension may be enforced or probated. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | | |
| Forgery: Offense Against Property that involves an intent to defraud or harm another which by its own definition is deemed unprofessional or dishonorable conduct as defined in TOC §301.452(b)(10). | F, M | <u>32.21</u> | If felony, 0-3 yrs old Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend, if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, then issue license with or without stipulations. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, then issue license with or without stipulations. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | By definition this conduct is deemed unprofessional or dishonorable conduct as defined in TOC §301.452(b)(10). Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** ≥ 5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Fraudulent Destruction, Removal, or Concealment of Writing; Offense Against Property that involves an intent to defraud or harm another through the destruction, removal, concealment, substitution, or alteration of a writing that impairs the use of the writing. | F, M | 32.47 32.47 | For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | psychological evaluation with or without a polygraph examination may be requested. | | |
| Fraudulent Use of Possession of Identifying Information: Offense Against Property that involves an intent to defraud or harm another through the possession, transfer, or use of another person's identifying information without consent. | F | <u>32.51</u> | 0-3 yrs old, if on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, then impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |
| Harassment: Offense Against | M | <u>42.07</u> | 0-3 yrs old impose | Issue license with or without | Patients under the care of a nurse are vulnerable |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Public Order and Decency that involves intent to alarm, abuse, or torment another person. It also may involve threats to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property. | | | discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations. A mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | stipulations. A mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Nurses are frequently in situations where they provide intimate care to patients and are in the position to have access to privileged information and opportunity to exploit patient vulnerability. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. A person who has committed harassment against another person raises concerns that similar behavior may be repeated to exploit or harm vulnerable patients. |
| Harboring Runaway Child: Offense Against the Family that involves knowingly harboring a child and being criminally negligent regarding whether the child has escaped from a law enforcement or juvenile facility or the child's home without the consent of the child's parents. | M | <u>25.06</u> | Impose discipline/issue with stipulations. | Issue license with or without stipulations. | Children are vulnerable by nature of their reliance on their parents for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. Individuals who engage in such conduct raise serious concerns about whether they are capable of providing autonomous care to vulnerable individuals in their care. |
| Endangering Apprehension or Prosecution: Offense Against | F, M | <u>38.05</u> | For felony, 0-3 yrs old, then | For felony, if on felony probation, then | Such behavior raises questions about a nurse's professional character. Professional character is |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred 2.5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Public Administration that involves intentionally hindering the arrest, prosecution, conviction, or punishment of another person by harboring, concealing, aiding, or warning the other person. | | | Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. | Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license with or without stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, keep promises and honor obligations, be accountable for his/her behavior, and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| Hindering Secured Creditors: Offense Against Property involving intentional conduct that deprives a secured creditor of its rightful security interest in, and possession of, property. | F, M | 32.33 | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested.. | with or without stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |
| Improper Photography: Offense Against the Person that involves engaging in the secret photography of another person for purposes of sexual gratification. | F | 21.15 | Deny/Revoke License. | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | Such a violation of trust and secret activity raises serious concern that such behaviors may be repeated in nursing care. Nurses are frequently in situations where they provide intimate care to vulnerable patients, often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct involving the secret photography of another person for prurient interests raises serious concerns that similar behavior may be repeated by a nurse with even more vulnerable victims. |
| Improper Relationship between Educator and Student: Offense | F | 21.12 | Deny/Revoke License. | If on felony probation, then Deny/Revoke; if not on felony | Such a violation of trust given the disparate relationship between a student and teacher raises |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred 2.5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Against the Person that involves a teacher engaging in sexual contact with a primary or secondary school student. | | | | probation, impose discipline/issue license with stipulations. A mental health/psychological evaluation and/or a sexual offender evaluation may be required and a forensic psychological evaluation with or without a polygraph examination may be requested. | serious public concern. Nurses are frequently in situations where they provide intimate care to vulnerable patients, often having contact with partially clothed or fully undressed patients, including minors. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct that involves violation of the boundaries between teacher and student raise serious concerns that similar behavior may be repeated in the nurse - patient relationship with even more vulnerable victims. (Note: If required to register as sex offender under ch. 62, subject to TOC §301.4535). |
| Insurance Fraud: Claim > \$500; Offense Against Property that involves the intent to defraud or deceive another of at least \$500 by using information known to contain false or misleading material information. | F | 35.02(c) | 0-3 yrs old Deny/Revoke: 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, then impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | By definition, this conduct is deemed unprofessional or dishonorable conduct as defined in TOC §301.452(b)(10). Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility and there is a continuing opportunity to commit similar offenses as a nurse. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |
| Insurance Fraud: Claim ≤ \$500; Offense Against Property that involves an intent to defraud or | M | 35.02(c)(1)-(3) | 0-3 yrs old, impose discipline/ issue with stipulations; 4-5 yrs | Issue license with or without stipulations. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| deceive another by using information known to contain false or misleading material information, which by its own definition is deemed unprofessional or dishonorable conduct as defined in TOC §301.452(b)(10). | | | old, issue license with or without stipulations. | | reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |
| Insurance Fraud: Intent to Defraud: Offense Against Property that involves knowingly making a false material representation to an insurance company with the intent of defrauding the insurance company of at least \$1500.00. | F | 35.02(a-1), (d) | 0-3 yrs old Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, then impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |
| Interference with Child Custody: Offense Against the Family that involves taking or retaining a minor child in knowing violation of a judicial judgment or order. | F | 25.03 | 0-3 yrs old Deny/Revoke; 4-5 yrs, if on felony probation, then Deny/Revoke; if not on felony probation, | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | Children are vulnerable by nature of their reliance on their parents for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | then impose discipline/issue license with stipulations. | | vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental and cognitive ability is compromised and patients who are disabled or immobilized. Individuals who engage in this type of behavior raise serious concerns about whether they are capable of providing autonomous care to vulnerable individuals in their care and whether they are able to discern right from wrong. |
| Intoxication Assault: Offense Against Public Health, Safety, and Morals that causes serious bodily injury to another person due to the person's own intoxicated state while operating a vehicle, aircraft, or amusement ride. | F | 49.07 | Deny/Revoke/Suspend License. Suspension may be enforced or probated. A chemical dependency evaluation may be required. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A chemical dependency evaluation may be required. | Such conduct could indicate an issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired are at risk for harming patients and/or the public and demonstrate a potential inability to practice nursing with reasonable skill and safety. |
| Intoxication Manslaughter: Offense Against Public Health, Safety, and Morals that causes the death of another person due to the person's intoxicated state while operating a vehicle, aircraft, or amusement ride. | F | 49.08 | Deny/Revoke License. | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. A chemical dependency evaluation may be required. | Such conduct could indicate an issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially vulnerable include |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| <p>Medicaid Fraud ≥ \$1500: Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of at least \$1500.00. The offense may also involve seeking certification of a hospital, a nursing facility, skilled nursing facility, hospice, an intermediate care facility for the mentally retarded, assisted living facility, or a home health agency.</p> <p>See Note At End of Document.</p> | F | 35A.02(b)(4)-(7) | | | <p>the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired are at risk for harming patients and/or the public and demonstrate a potential inability to practice nursing with reasonable skill and safety.</p> <p>Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Nurses often manage and own certified nursing facilities and home health agencies. Further, APRNs submit billing information to Medicaid for reimbursement regarding services they provide. Honesty in such billing practices is required. The commission of Medicaid fraud raises serious concerns of professional character and whether the same misconduct will be repeated with respect to a patient's property/possessions, future Medicaid charges, or in facility certification processes.</p> |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Medicaid Fraud < \$1500; Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of less than \$1500.00 which would not be authorized but for the misrepresentation. The offense may also involve seeking certification of a hospital; a nursing facility, skilled nursing facility; hospice; an intermediate care facility for the mentally retarded; assisted living facility; or a home health agency. See Note At End of Document. | M | <u>35A.02(b)(2)-(3)</u> | 0-3 yrs old impose discipline/ issue with stipulations; 4-5 yrs issue license with or without stipulations. examination may be requested. | Issue license with or without stipulations. | Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Nurses are often in the position to run and often own certified nursing facilities and home health agencies. Further, APRNs submit billing information to Medicaid for reimbursement regarding services they provide. Honesty in such billing practices is required. The commission of Medicaid fraud raises serious concerns of professional character, and whether the same misconduct will be repeated with respect a patient's property/possessions and future Medicaid charges. |
| Misapplication of Fiduciary Property or Property of Financial Institution: Offense Against Property that involves an intentional, knowing, or reckless misapplication of property that he/she holds as a fiduciary for a financial institution. | F, M | <u>32.45</u> | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license with or without stipulations. For either a felony or misdemeanor, a forensic psychological evaluation without a polygraph examination may be requested. | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, issue license with or without stipulations. For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Conduct involving a substantial risk of loss to a person's property raises serious concerns about a nurse's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | impose discipline/issue license with stipulations For either a felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | | |
| Money Laundering ≥ \$1500; Offense Against Property that involves knowingly engaging in a criminal enterprise to conceal, invest or possess at least \$1500.00 known to be the proceeds of illegal activity. | F | <u>34.02(e)(1)-(4)</u> | 0-3 yrs old Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. In nursing, patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. A person who has demonstrated behavior associated with profiteering from criminal enterprises raises questions of professional character and whether similar behavior will be repeated with respect to a patient's property. |
| Obscenity, Participates/Wholesale Promotion; Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material, obscene device, or activity. | F, M | <u>43.23</u> | If felony, 0-3 yrs old Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, then impose | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. | Nurses are frequently in situations where they provide intimate care to vulnerable patients, often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. The need or desire to profit from sexually explicit and obscene material raises concerns that sexual misconduct may be |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order*** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, 0-3 yrs old, Deny/Revoke/ Suspend. 4-5 yrs old, impose discipline/issue license with stipulations. Suspension may be enforced or probated. For either a felony or misdemeanor, a sex offender evaluation may be required and a forensic psychological evaluation with or without a polygraph examination may be requested. | If misdemeanor, issue license with or without stipulations. For either a felony or a misdemeanor, a sex offender evaluation may be required and a forensic psychological evaluation with or without a polygraph examination may be requested. | committed through exploitation of patients. |
| Obstruction or Retaliation: Offense Against Public Administration that involves intentionally or knowingly harming or threatening to harm another in retaliation for that person's lawful report of a crime or status as a witness, informant, or public. | F | 36.06 | 0-3 yrs old Deny/Revoke; 4-5 yrs. if on felony probation, then Deny/Revoke; if not on felony probation, then impose discipline/issue license with | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | Such behavior raises questions about a nurse's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such assaultive and threatening behavior raises serious concerns about whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: stipulations. | If judicial order** occurred ≥5 yrs. ago and 5th yr. probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Perjury: Offense Against Public Administration that involves making a false statement under oath with the intent to deceive. | M | <u>37.02</u> | Impose discipline/issue with stipulations. | Issue license with or without stipulations. | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such deceptive and dishonest behavior raises serious concerns about a person's propensity to lie and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| Prohibited Substances and Items in Correctional Facility: Offense Against Public Administration that involves possessing and/or providing prohibited substances to a person confined in a correctional facility. | F | <u>38.11</u> | 0-3 yrs old Deny/Revoke: 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, then impose discipline/issue license with stipulations. Suspension may be enforced or probated. A mental health/psychological evaluation or a chemical dependency evaluation (if the prohibited substances involve alcohol or controlled substances) may be required. A forensic health/psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A mental health/psychological evaluation or a chemical dependency evaluation (if the prohibited substances involve alcohol or controlled substances) may be required. A forensic psychological evaluation with or without a polygraph examination may be requested. | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, think and act rationally, be accountable for his/her behavior and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred 2.5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | psychological evaluation with or without a polygraph examination may be requested. | | |
| Prohibited Weapon: Offense Against Public Health, Safety, and Morals that involves the intentional or knowing possession, manufacture, transport, repair, or sale of restricted weapons. | F, M | <u>46.05</u> | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend, if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license with or without stipulations. | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license with or without stipulations. | Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that could lead to an assaultive offense. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. |
| Prostitution X 3, Prostitution of Promotion of, or Aggravated Promotion: Offense Against Public Order and Decency involving offering/repeatedly offering to engage in sexual conduct for a fee or promoting others to engage in sex for a fee. | F, M | <u>43.02, 43.04</u> | For felony, 0-3 yrs old Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, then impose discipline/issue license with | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. For misdemeanor, issue license with or without stipulations. | Prostitution is a crime of moral turpitude. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability both financially and sexually. There are appropriate boundaries in the nurse-patient relationship which nurses must clearly |

| OFFENSE | PENALTY <u>F = Felony</u> <u>M = Misdemeanor</u> | PENAL CODE SECTION (or <u>Crim. Pro.</u> <u>ch. 62</u>) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred 2-5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | <p>stipulations. Suspension may be enforced or probated.</p> <p>For misdemeanor, 0-3 yrs old, impose discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations.</p> <p>For either felony or misdemeanor, a mental health/psychological evaluation or a chemical dependency evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | <p>For either a felony or misdemeanor, a mental health/psychological evaluation or a chemical dependency evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | <p>understand and be trusted not to cross.</p> <p>Repeated acts of illegal sexual conduct raise serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients and avoid exploitation of patients.</p> |
| Protective Order, Violation: Offense Against the Family identified by TOC §301.4535 as directly affecting the practice of nursing. It also may involve threats to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property. | M | <u>25.07, 38.112</u> | 0-3 yrs old, impose discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations. | Issue license with or without stipulations. | <p>Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Nurses are frequently in situations where they provide intimate care to patients and are in the position to have access to privileged information and opportunity to exploit patient vulnerability. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. A person</p> |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | | who has committed harassment against another person raises concerns that similar behavior may be repeated to exploit or harm vulnerable patients. |
| Public Lewdness: Offense Against Person that involves knowingly or recklessly engaging in sexual conduct in a public place or where another person may be present and may be alarmed or offended by the conduct. | M | <u>21.07</u> | Impose discipline/issue with stipulations. A mental health/psychological and/or sexual offender evaluation may be required. | Issue license with or without stipulations. A mental health/psychological and/or sexual offender evaluation may be required. | Nurses are frequently in situations where they provide intimate care to vulnerable patients, often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct of this type raises serious concerns that similar behavior may be repeated by a nurse with even more vulnerable victims. |
| Resisting Arrest Offense Against Public Administration that involves intentionally obstructing or preventing an arrest by using force against another person. | M | <u>38.03(a)</u> | 0-3 yrs old, impose discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations. | Issue license with or without stipulations. | Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed an assaultive offense raises serious questions regarding his/her ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. |
| Resisting Arrest, Use of Deadly Weapon: Offense Against Public Administration that involves using a deadly weapon against another person. | F | <u>38.03(d)</u> | Deny/Revoke License. | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. | Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed an assaultive offense raises serious questions regarding his/her ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. |
| Securing Execution of Document by Deception: Offense Against Property that involves an intent to | F, M | <u>32.46</u> | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness. |

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| defraud or harm another by deception by causing another person to sign, execute, or file a document that affects the person's property or pecuniary interests. | | | <p>ys. if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>If a misdemeanor, impose discipline/issue license with stipulations.</p> <p>For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | <p>felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>If a misdemeanor, issue license with or without stipulations.</p> <p>For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions. |
| Smuggling of Persons: Offense Against the Person that involves intentionally using a mode of transportation to transport a person with the intent to conceal the person from law enforcement or flee from law enforcement. | F | 20.05 | <p>If on felony probation, then Deny/Revoke/Suspend.</p> <p>If not on felony probation, then impose discipline/issue license with stipulations.</p> | <p>If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>A forensic psychological evaluation with or without a polygraph examination may be</p> | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, keep promises and honor obligations, be accountable for his/her behavior, and whether the nurse will continue such behavior and |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | requested. jeopardize the effectiveness of patient care in the future. | |
| Stalking: Offense Against Public Order and Decency that involves a person knowingly engaging in repetitive conduct that is intended to be threatening in nature and imposing a fear of bodily injury or death on another person. | F | <u>42.072(b)</u> | Deny/Revoke/ Suspend License. Suspension may be enforced or probated. A mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | Such threatening behavior raises questions regarding a person's ability to provide safe, competent care to vulnerable patients. Such behavior is unprofessional/ dishonorable conduct that is likely to injure the public. TOC §301.452(b)(10). |
| Tampering with Government Record: Offense Against Public Administration that requires an intent to defraud or harm another by destroying or falsifying a government record. | F | <u>37.10</u> | 0-3 yrs old Deny/Revoke: 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, then impose discipline/issue license with stipulations. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. The Board depends on its own government records in the licensing/ authorization process that contain several questions that might affect the ability of an individual to function safely as a nurse. Tampering with government records, including falsification of an application for licensure to the Board, raises concerns about the person's |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | | propensity to lie, and the likelihood that such conduct will continue in the practice of nursing. Nurses must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct. Honesty, accuracy, and integrity are personal traits valued by the nursing profession and considered imperative for the provision of safe and effective nursing care. |
| Tampering With or Fabricating Physical Evidence: Offense Against Public Administration that involves altering, destroying, concealing, or falsely presenting a record with the intent to impair its use or availability during an investigation or proceeding and/or alter the outcome of the investigation or proceeding. | F, M | <u>37.09</u> | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs. if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, issue license with or without stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Tampering with or fabricating evidence raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing. Nurses must report patient conditions, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct. Honesty, accuracy and integrity are personal traits valued by the nursing profession and considered imperative for the provision of safe and effective nursing care. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| Tampering with Witness: Offense Against Public Administration that involves coercing or offering, conferring, or agreeing to confer a benefit on a witness or potential witness with the intent to influence the witness to provide false testimony, to withhold testimony, or to elude the legal process. | F | <u>36.05</u> | without a polygraph examination may be requested. | Deny/Revoke License. If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline: issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | Such behavior raises questions about a person's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, think and act rationally, be accountable for his/her behavior, and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| Terroristic Threat: Offense Against Persons that involves threatening violence to persons or property. | F, M | <u>22.07</u> | For either felony or misdemeanor, 0-3 yrs old, impose discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations. | For either felony or misdemeanor, issue license with or without stipulations. | Stress inherent in the practice of nursing and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding his/her ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. |
| Theft ≤ \$1499: Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. | M | <u>31.03(c)(1) - (3)</u> | 0-3 yrs old impose discipline/issue with stipulations; 4-5 yrs old, issue with or without stipulations. | Issue license with or without stipulations. | Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | | | property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Crimes of theft raise serious concerns whether a nurse can be trusted to respect a patient's property/possessions in the future. A nursing license would provide unfettered opportunity and access to a patient's person and property. |
| Theft > \$1500: Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. | F | <u>31.03(e)(4)-(7)</u> | Deny/Revoke License. | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a polygraph examination may be requested. | Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse can be trusted to respect a patient's property/possessions in the future. A nursing license would provide unfettered opportunity and access to a patient's person and property. |
| Theft of Service: Offense Against Property that involves an intent to avoid payment for services and intentionally or knowingly secures the services by deception, threat, diversion, or false token. | F, M | <u>31.04</u> | For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke; Suspend; if not on felony probation, impose | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If misdemeanor, issue license | Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | with or without stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nursing license would provide unfettered opportunity and access to a patient's person and property. |
| Trafficking of Persons: Offense Against the Person that involves knowingly trafficking another person with the intent that the other person engage in forced labor or services and/or trafficking another person and causing the person to engage in certain criminal acts through fraud, coercion, or force. | F | 20A.02 | Deny/Revoke License. | If on felony probation, then Deny/Revoke; if not on felony probation, impose discipline/issue license with stipulations. A forensic psychological evaluation with or without a polygraph examination may be requested. | Such behavior raises questions about a nurse's professional character. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Such behavior raises serious concerns about a person's ability to distinguish right from wrong, keep promises and honor obligations, be accountable for his/her behavior, and whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future. |
| Unlawful Carrying Weapon; Offense Against Public Health, Safety, and Morals that involves | F, M | 46.02 | For felony, 0-5 yrs old, then Deny/Revoke; 4-5 | For felony, if on felony probation, then Deny/Revoke/Suspend; if not on | Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that could |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| the intentional, knowing, or reckless carrying on his/her person of a prohibited weapon. | | | <p>1 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>If a misdemeanor, impose discipline/issue license with stipulations.</p> <p>For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | <p>felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>If misdemeanor, issue license with or without stipulations.</p> <p>For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | lead to an assaultive offense. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. Further, such behavior raises questions about whether the individual is able to distinguish right from wrong. |
| Unlawful Possession of Firearm; Offense Against Public Health, Safety, and Morals that involves the possession of a firearm by a convicted felon under certain conditions. | F, M | 46.04 | <p>For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs old, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations.</p> <p>If a misdemeanor, impose discipline/issue license with stipulations.</p> | <p>For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>If misdemeanor, issue license with or without stipulations.</p> | Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that could lead to an assaultive offense. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury. Further, such behavior raises questions about whether the individual is able to distinguish right from wrong. |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | license with stipulations. Suspension may be enforced or probated. If a misdemeanor, impose discipline/issue license with stipulations. For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | For felony or misdemeanor, a forensic psychological evaluation with or without a polygraph examination may be requested. | |
| Unlawful Restraint: Offense Against the Person that involves intentionally or knowingly restraining another person. | M | 20.02 | 0-3 yrs old, impose discipline/issue with stipulations; 4-5 yrs old, issue license with or without stipulations. | Issue license with our without stipulations. | Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under §301.4535. |
| Vehicle, Unauthorized Use; Offense Against Property that involves an intentional or knowing act to deprive a person of his/her vehicle without his/her consent. | F | 31.07 | 0-3 yrs old Deny/Revoke: 4-5 yrs old, if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, then impose discipline/issue license with | If on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. A forensic psychological evaluation with or without a | Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | <p>stipulations. Suspension may be enforced or probated.</p> <p>A forensic psychological evaluation with or without a polygraph examination may be requested.</p> | <p>polygraph examination may be requested.</p> | <p>property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse can be trusted to respect a patient's property/possessions in the future.</p> |
| <p>Violation of Civil Rights of Person in Custody/Improper Sexual Acts With a Person in Custody: Offense Against Public Administration that involves intentionally denying or impeding a another person in custody at a correctional facility a lawful right, privilege, or immunity and/or engaging in sexual conduct with a person in custody at a correctional or youth facility.</p> | F, M | <u>39.04</u> | <p>For felony, 0-3 yrs old, then Deny/Revoke; 4-5 yrs. if on felony probation, then Deny/Revoke/ Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated.</p> <p>If a misdemeanor, impose discipline/issue license with or without stipulations. For felony or misdemeanor, a mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested.</p> <p>If a misdemeanor, impose discipline/issue license with stipulations. For felony or misdemeanor, a mental health/psychological</p> | <p>For felony, if on felony probation, then Deny/Revoke/Suspend; if not on felony probation, impose discipline/issue license with stipulations. Suspension may be enforced or probated. If a misdemeanor, issue license with or without stipulations. For felony or misdemeanor, a mental health/psychological evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested.</p> | <p>Individuals who are in custody in correctional or youth facilities are particularly vulnerable by nature of their reliance on others for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. When harm occurs to these individuals, often they are unable to communicate the harm inflicted. Individuals engaging in such conduct raise serious concerns whether they are capable of providing autonomous care to vulnerable individuals in their care.</p> |

| OFFENSE | PENALTY F = Felony M = Misdemeanor | PENAL CODE SECTION (or Crim. Pro. ch. 62) | If judicial order** occurred 0-5 yrs. ago: | If judicial order** occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation*** has not occurred: | Rationale for How Crimes Relate to the Practice of Nursing |
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| | | | evaluation may be required and/or a forensic psychological evaluation with or without a polygraph examination may be requested. | | |

*Texas Occupations Code §53.021(b) requires a person's license to be revoked on the person's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

**When used in this guideline, the term "judicial order" means orders of conviction (regardless of plea entered) and deferred adjudication (regardless of plea entered), as well as deferred dispositions, including, but not limited to, pre-trial diversion agreements and deferred prosecutions.

***When used in this guideline, the term "probation" means community supervision, probation, parole, and any other requirement that results from or is related to a criminal disposition of any form, including deferred dispositions (such as pre-trial diversion agreements and deferred prosecutions).

**** In accordance with Texas Occupations Code §301.4535, licensees or applicants for licensure receiving judicial orders for these designated offenses on or after September 1, 2005, shall not be licensed, shall be revoked, and/or shall not be renewed and not considered for re-licensure until at least the fifth anniversary following release from probation or community service has occurred. This does not prevent a nurse or applicant for licensure from exercising any right or privilege to have a formal hearing as established by virtue of Texas Occupations Code §301.454(c).

Note: Licensees may be excluded from working in various federally-funded facilities for convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans. The Office of Inspector General states that "[n]o payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. Federal health care programs include Medicare, Medicaid, and all other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan). For exclusions implemented prior to August 4, 1997, the exclusion covers the following Federal health care programs:

Medicare (Title XVIII), Medicaid (Title XIX), Maternal and Child Health Services Block Grant (Title V), Block Grants to States for Social Services (Title XX) and State Children's Health Insurance (Title XXI) programs." For more information, see <http://www.oig.hhs.gov/fraud/exclusions/aboutexclusions.html>, and 1 Tex. Admin. Code §§371.1655 & 371.1657 (mandatory and permissive exclusions from Medicaid and Title V, XIX, XX, and CHIP programs by the Texas Health and Human Services Commission, Office of Inspector General).

The Board's recommendation regarding licensure is independent of any decision by an employer or potential employer to hire a person with a criminal history.

TRD-201301771
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Filed: May 3, 2013

◆ ◆ ◆
Public Utility Commission of Texas

**Announcement of Application for Amendment to a
State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on May 3, 2013, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 41460.

The requested amendment is to expand the service area footprint to include the municipality of Seymour, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41460.

TRD-201301820
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2013

◆ ◆ ◆
**Announcement of Application for State-Issued Certificate of
Franchise Authority**

The Public Utility Commission of Texas received an application on May 2, 2013, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of BCI Allegiance, LLC for a State-Issued Certificate of Franchise Authority, Project Number 41450.

The requested SICFA service area consists of New Boston, Winters, Maud, Perryton, Hooks, DeKalb, Dalhart, and Ballinger, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41450.

TRD-201301770
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2013

**Commission Proceeding to Ensure Resource Adequacy in
Texas**

The Public Utility Commission of Texas will hold a workshop in Project No. 40000, *Commission Proceeding to Ensure Resource Adequacy in Texas*. The workshop will be held on Thursday, June 27, 2013 at 9:30 a.m. in the Commissioners' Hearing Room at the Commission offices at 1701 N. Congress, 7th floor, Austin, Texas 78701. ERCOT filed a report titled "Back Cast of Interim Solution B+ to Improve Real-Time Scarcity Pricing" in Project No. 40000, Item No. 392, on March 22, 2013. The commission has requested comments from interested parties on the Interim Solution B+ proposal and the back cast results with a comment deadline of Friday, May 31, 2013, with Notice published in the *Texas Register* on Friday, May 17, 2013. This workshop will explore issues raised in the proposal by ERCOT as well as comments received from stakeholders. A detailed agenda for the workshop will be published one week prior to the workshop.

Questions concerning the workshop or this notice should be referred to Diana Leese, Competitive Markets Division, at (512) 936-7204, or Mark Bryant, Competitive Markets Division, at (512) 936-7279. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136.

TRD-201301795
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2013

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Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on April 30, 2013, with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3).

Docket Style and Number: Application of Worldcall Interconnect, Inc. for a Permanent Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 41436.

The Application: Worldcall Interconnect, Inc. (applicant) is a commercial mobile radio service (CMRS) provider. Applicant has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Applicant indicated it has no method to determine assessable TUSF intrastate receipts other than by the use of the safe harbor percentage. Applicant requests that the commission grant it a permanent waiver under the P.U.C. Substantive Rule §26.420(f)(3)(B)(ii) from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow applicant to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 28, 2013, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41436.

TRD-201301769
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2013

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 1, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Ochiltree and Lipscomb Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line within Ochiltree and Lipscomb Counties. Docket Number 41334.

The Application: The application of Southwestern Public Service Company (SPS) for a proposed 115-kV transmission line is designated as the Ochiltree Substation to Lipscomb Substation Transmission Line Project. The facilities include construction of a new 115-kV single circuit transmission line between the existing Ochiltree Substation located in Ochiltree County and the new Lipscomb Substation located in Lipscomb County. The total estimated cost for the project ranges from approximately \$16.7 million to \$20.6 million depending on the route chosen.

The proposed project is presented with seven (7) alternate routes consisting of a combined 36 segments and is estimated to be approximately 19 to 27 miles in length depending on which route is selected. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 17, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41334.

TRD-201301767
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2013

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Notice of ERCOT Filing for Approval of Protocol Revisions

Notice is hereby given to the public of the May 3, 2013, filing with the Public Utility Commission of Texas (commission) of the Electric Reliability Council of Texas, Inc. (ERCOT) a petition for approval of protocol revisions affecting non-competitive constraint designations.

Docket Style and Number: Petition of the Electric Reliability Council of Texas, Inc. for Approval of Protocol Revisions Affecting Non-Competitive Constraint Designations, Docket Number 41462.

The Application: Pursuant to P.U.C. Substantive Rule §25.502(f)(4), ERCOT filed a petition seeking approval of revisions to its protocols and other standards that would affect the designation of non-competitive constraints in the ERCOT market. In accordance with P.U.C. Substantive Rule §25.502(f)(4) any amendment to the protocols shall not take effect unless ordered by the commission. The ERCOT board of directors approved Nodal Protocol Revision Request (NPRR) 520 at its March 19, 2013, meeting, and the document titled "Threshold Values for Competitive Constraint Test" was unanimously approved by the Technical Advisory Committee on May 2, 2013. The NPRR was

intended to narrow the circumstances in which real-time mitigation of generator offers would occur, as recommended by the commission's independent market monitor. This change is effectuated by the NPRR's introduction of a new real-time competitive constraint test, which considers several variables that determine whether a given transmission constraint will be deemed either competitive (in which case no mitigation would apply) or non-competitive (requiring mitigation of certain generators' offers).

ERCOT represented that the changes to these standards are critical to addressing the concerns raised by the independent market monitor regarding the excessive mitigation of generator offers in the real-time market, and these developments should ensure that energy prices more accurately reflect the system conditions and constraints at issue. The revisions are scheduled to be implemented in ERCOT's computer systems beginning June 10, 2013.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41462.

TRD-201301794
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2013

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw Distinctive Ring for Residence Customers Pursuant to Substantive Rule §26.208(h) - Docket Number 41410.

The Application: On April 23, 2013, pursuant to P.U.C. Substantive Rule §26.208(h), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T or Applicant) filed an application to withdraw Distinctive Ring for residence customers. AT&T Texas explained that it is discontinuing this service to align and simplify product offerings throughout its 22-state footprint. AT&T proposed an effective date of August 1, 2013. The proceedings were docketed and suspended on April 24, 2013, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Docket Number 41410.

TRD-201301841
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2013

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 30, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Electra Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41435.

The Application: On April 30, 2013, Electra Telephone Company (Electra or applicant) filed an application for revisions to its local exchange tariff to increase residential access line rates. Electra proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the applicant is \$17,568 in gross annual intrastate revenues. The applicant has 976 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41435.

TRD-201301768
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 3, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of La Ward Telephone Exchange, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and PURA Chapter 53, Subchapter G, Tariff Control Number 41455.

The Application: On May 3, 2013, La Ward Telephone Exchange, Inc. (La Ward Telephone or Applicant) filed an application for revisions to its monthly Residential and Business Local Exchange Access Line Service Rates. La Ward Telephone proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$16,816.20 in gross annual intrastate revenues. The Applicant has 777 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of

customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41455.

TRD-201301816
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 3, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Lake Livingston Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and PURA Chapter 53, Subchapter G, Tariff Control Number 41456.

The Application: On May 3, 2013, Lake Livingston Telephone Company (Lake Livingston or Applicant) filed an application for revisions to its monthly Residential, Business, Rotary, Key PBX, and Pay Telephone Local Exchange Access Line Service Rates. Lake Livingston proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$8,813.40 in gross annual intrastate revenues. The Applicant has 704 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41456.

TRD-201301817
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2013



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 3, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Southwest Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and PURA Chapter 53, Subchapter G, Tariff Control Number 41457.

The Application: On May 3, 2013, Southwest Texas Telephone Company (Southwest Texas or Applicant) filed an application with the commission for revisions to its monthly Residential Access Line Service Rates. Southwest Texas proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is \$16,814 in gross annual intrastate revenues. The Applicant has 3,006 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41457.

TRD-201301818

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 7, 2013

Texas State Technical College System

Request for Proposals for Bond Counsel

Texas State Technical College System (TSTC) is requesting proposals for bond counsel services relating to tuition revenue bond issuance and other financial matters. The term of the proposed services will extend from the date of appointment for a period of three years. The deadline for proposal submission is 1:00 p.m., Friday, May 31, 2013.

TSTC's Board of Directors (the "Board") will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request for Proposal must maintain a Texas office staffed with personnel who are responsible for providing bond counsel services to TSTC. All things being equal, the Board will give first consideration to firms headquartered in Texas. By the Request for Proposal, however, the Board has not committed itself to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained from the Electronic State Business Daily website at: <http://esbd.cpa.state.tx.us/> on or after May 13, 2013.

TRD-201301821

Chris Nors

Accountant

Texas State Technical College System

Filed: May 7, 2013

Request for Proposals for Financial Advisor

Texas State Technical College System (TSTC) is requesting proposals for financial advisory services relating to the issuance of bonds and for other financial matters. The term of the proposed services will extend from the date of appointment for a period of three years. The deadline for proposal submission is 1:00 p.m., Friday, May 31, 2013.

TSTC's Board of Regents (the "Board") will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request for Proposal must maintain a Texas office staffed with personnel who are responsible for providing financial advisory services to TSTC. All things being equal, the Board will give first consideration to firms headquartered in Texas. By the Request for Proposal, however, the Board has not committed itself to employ a financial advisor nor does the suggested scope of service or term of agreement therein require that the financial advisor be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained from Electronic State Business Daily website at <http://esbd.cpa.state.tx.us> on or after May 13, 2013.

TRD-201301819

Chris Nors

Accountant

Texas State Technical College System

Filed: May 7, 2013

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Stonewall County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

Current Project: Stonewall County. TxDOT CSJ No.: 1308STONE. Scope: Engineering/ design for pavement rehabilitation.

1. rehabilitate, mark, sterilize and seal crack RW 17-35
2. rehabilitate, mark, sterilize and seal cracks parallel TXWYs
3. rehabilitate, mark, sterilize and seal cracks Cross TXWYs and aprons (south and north)

The DBE goal for the current project is 6 percent. TxDOT Project Manager is Eusebio Torres, PE.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Stonewall County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than June 11, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201301845
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 8, 2013



Corrected Notice of Availability - Loop 375 Border Highway West Extension Project

This notice of availability was first published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2804). **The Texas Department of Transportation is publishing the notice a second time to correct the web address for the State Draft EIS and Abbreviated State FEIS.**

The Texas Department of Transportation department is announcing the availability of the Abbreviated State Final Environmental Impact Statement (FEIS) dated April 2013 for the proposed construction of the Loop 375 Border Highway West Extension Project, from Racetrack Drive (near Doniphan Road and New Mexico [NM] 273, west of downtown El Paso) to United States (US) 54 (east of downtown El Paso), a total length of approximately nine miles, of which approximately seven miles would be tolled.

The department has prepared an Abbreviated State FEIS which responds to comments on the State Draft EIS made by participating and cooperating agencies and from the public. Additionally, the Abbreviated State FEIS makes changes to Alternative 2, the Preferred Alternative (referred to as the Revised Preferred Alternative), that address input received during the public hearing held on November 15, 2012.

The Revised Preferred Alternative is a combination of Reasonable Alternatives Rail Yard B and Border A presented in the State Draft EIS. As a result of the public comments, design changes were made to the alternative, to continue access to NM 273 on the western terminus, to improve access to the downtown area, to reduce impacts in the vicinity of Coles Street near the eastern terminus, and to reduce impacts from the various proposed drainage ponds. Approximately 144.93 acres of right-of-way (ROW) would be needed, including 38.06 acres for 13 drainage ponds, 0.20 acre of ROW from the Chihuahueta Park, and 4.68 acres of temporary construction easements. The department's approval of the Abbreviated State FEIS constitutes acceptance of the Revised Preferred Alternative. The department will review any comments submitted concerning the Abbreviated State FEIS. The department may then issue a record of decision which would complete the department's environmental review of the project.

You may review and copy the State Draft EIS and the Abbreviated State FEIS at the following locations:

- (1) Texas Department of Transportation, Environmental Affairs Division, 118 E. Riverside Drive, Austin, Texas 78701;
- (2) Texas Department of Transportation, El Paso District Office, 13301 Gateway Blvd. West, El Paso, Texas 79928;
- (3) Clardy Fox Branch Library, 5515 Robert Alva Rd., El Paso, Texas 79905;
- (4) Memorial Park Branch Library, 3200 Copper Dr., El Paso, Texas 79930;
- (5) Armijo Branch Library, 620 East 7th Ave., El Paso, Texas 79901; and
- (6) Main Library, 501 N. Oregon St., El Paso, Texas 79901.

The State Draft EIS and Abbreviated State FEIS may also be downloaded from the department's El Paso District project website:

<http://www.txdot.gov/inside-txdot/projects/studies/el-paso/border-highway-west.html>. To request that a copy of the State Draft EIS and Abbreviated State FEIS be made at the requestor's expense, please contact Eduardo Calvo, Advance Planning Director, 13301 Gateway Blvd. West, El Paso, Texas 79928, or call (915) 790-4200.

You may submit comments concerning the Abbreviated State FEIS at the following address: Loop 375 BHW Comments c/o HNTB Corporation, 7500 Viscount Blvd., Suite 100, El Paso, Texas 79925. You may submit comments by email at info@borderhighwaywest.com. Any comments must be submitted no later than June 3, 2013.

TRD-201301811

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 7, 2013

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, June 4, 2013, at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas, to receive public comments on the proposed updates to the 2013 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Texas Administrative Code, Title 43, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2013 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at:

http://www.txdot.gov/public_involvement/utp.htm.

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 not later than Monday, June 3, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2013 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2013 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, June 17, 2013.

TRD-201301812

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 7, 2013

Workforce Solutions Brazos Valley Board

Notice of Release of Request for Proposal

On May 14, 2013, the Workforce Solutions Brazos Valley Board (WSBV) will release a Request for Proposal (RFP) for Independent Financial Monitoring by a Certified Public Accountant. The proposal requirements are contained in the Request for Proposal which may be obtained at www.bvjobs.org. The Board is seeking one contractor who is a CPA to provide services to include fiscal monitoring of programs and expenditures for the Workforce Solutions Brazos Valley Board. The RFP may be viewed and printed from the internet on www.bvjobs.org.

Bidders Conference

There will be no bidders conference for this procurement. Questions may be directed to Richard Rogers, Board Consultant at (512) 963-4895 or e-mail richard@swtexas.net. A question and answer document pertaining to this procurement will be posted on the Board's web page no later than May 28, 2013.

Due Date

An original and four copies of a written proposal are due to the Board's office no later than 4:00 p.m., CST, on June 4, 2013. No proposals will be accepted after this deadline. Proposals may be sent to:

Richard Rogers, Board Consultant

c/o

Workforce Solutions Brazos Valley Board

P.O. Box 4128

Bryan, Texas 77805

ATTN: Response to Financial Monitoring RFP

Or hand delivered to:

Richard Rogers, Board Consultant

c/o

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

Workforce Solutions Brazos Valley Board is an equal opportunity employer and provides equal opportunity employment programs and services. Auxiliary aids are available upon request to disabled individuals. Relay Texas (800) 735-2989, TDD (800) 735-2988 voice, TTY (979) 595-2819.

TRD-201301835

Tom Wilkinson

Executive Director

Workforce Solutions Brazos Valley Board

Filed: May 8, 2013

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)